

RESOLUTION
OF THE SEJM OF THE REPUBLIC OF POLAND

of 21 October 2016

**declaring the Proposal for a Regulation of the European Parliament and of the Council
establishing the criteria and mechanisms for determining the Member State
responsible for examining an application for international protection lodged in one of
the Member States by a third-country national or a stateless person
as incompatible with the principle of subsidiarity**

Pursuant to Article 148cc of the Standing Orders of the Sejm, the Sejm of the Republic of Poland finds that the Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (COM(2016) 270 final) is incompatible with the principle of subsidiarity as referred to in Article 5(3) of the Treaty on European Union. This proposal infringes the principle of subsidiarity since the proposed regulation does not guarantee that the objectives of the proposed action would be better achieved at the European Union level than by measures taken at the national level. The reasoned opinion stating the reasons why the Sejm considers that the proposal does not comply with the principle of subsidiarity is annexed to this Resolution.

Reasoned opinion of the Sejm of the Republic of Poland of 21st of October 2016 presenting the reasons for which the Sejm considers that the Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person is incompatible with the principle of subsidiarity

The Sejm of the Republic of Poland finds that the Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (COM(2016) 270 final) is incompatible with the principle of subsidiarity as referred to in Article 5(3) of the Treaty on European Union (TUE). This proposal infringes the principle of subsidiarity since the proposed regulation does not guarantee that the objectives of the proposed action would be better achieved at the European Union level instead of measures taken at the national level.

The declared objective of the proposed regulation is to offer a solution in cases when a Member State is confronted with a disproportionate number of applications for international protection for which it is responsible under the proposed regulation. This objective is to be achieved by introducing a mechanism of redistribution of refugees among Member States – the so-called corrective allocation mechanism (Article 34-36 of Chapter VII of the proposed regulation entitled “Corrective Allocation Mechanism”), which will offer the possibility to automatically trigger the instrument in response to migratory pressure, in exceptional and emergency situations.

The prospective mechanism is to be composed of an automated system, to which asylum applications would be accessed. The corrective allocation mechanism is to be triggered automatically in favour of a Member State each time when the number of applications for international protection for which such a Member State is responsible on the basis of the criteria set out in the proposed regulation, plus the number of persons effectively resettled, exceeds the threshold of 150% of the “reference number”. The so-called reference number (Article 34(3)) will be established annually for each Member State by applying the “reference key” (Article 35) customised for each Member State in view of the number of asylum

applications for which the Member State has been the responsible Member State, and on the basis of the number of people that the Member State has accepted for resettlement. The system will calculate the percentage of applications for which each Member State will be responsible. The reference number will be based on two criteria: the size of the population of the Member State (50% of the weighting index) and the total GDP of the Member State (50% of the weighting index).

As of the triggering of the mechanism, all new applications lodged with the Member State experiencing migratory pressure, following the admissibility check, but before the Dublin check, will be allocated to other Member States that are below the threshold of 100% of the reference number.

Moreover, according to the provisions of Article 37 of the proposed regulation, each Member State will have the possibility to temporarily halt its participation in the corrective allocation mechanism. Such an intention will have to be notified via the abovementioned automated system. In the case of temporary suspension, the Member State will have to make the so-called solidarity contribution (Article 37(3)) in the amount of EUR 250,000 for each applicant for whom it would otherwise have been the Member State responsible under the corrective allocation mechanism.

In the opinion of the Sejm, the proposal will not allow to fulfil the abovementioned objective better – within the meaning of Article 5(3) TEU and Article 5 of Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality enclosed to TEU and the Treaty on the Functioning of the EU (TFEU) – than the Member States applying their national regulations.

The Sejm emphasises that the solution described as the so-called reference key does not take into account the scale of involvement of individual Member States in operational support granted to other Member States or the fact that a Member State may encompass a section of EU external border, nor does it take into account the hosting and integration capacities of Member States. All these elements are, though, of significant importance for assessing the current and potential burden borne by Member States in the context of the migration crisis.

Also, although the use of automated allocation of persons seeking international protection between the Member States may guarantee order in terms of quantitative management of migratory flows, it will lead to lowering of management standards in terms of quality. To use a hypothetical example: let us assume that as a result of using the automated corrective allocation mechanism Poland would be obliged to admit applicants seeking international protection. Let us assume that such applicants enter in a Member State located

far away from Poland, from that State's neighbouring country. Shortly after, it might be the case that Poland would have to deal with a significant migration pressure from citizens of Poland's neighbouring country, exceeding the Polish asylum system capabilities. As a result of using the automated corrective allocation mechanism, the asylum seekers coming from Poland's neighbouring country would be sent away to more remote Member States. A better solution is to host asylum seekers in the Member State neighbouring the country of origin, e.g. due to wider availability of interpreters of the language of the neighbouring country in comparison to a more remote Member State, closer cultural ties and knowledge of the neighbouring country's situation. This will facilitate the process of granting international protection and integration activities in the future.

In the Sejm's opinion, the use of the automated corrective allocation mechanism may lead to sending applicants for international protection to Member States located further away from their country of origin in order to process their applications for international protection. Meanwhile, in order to make the examination of the application process more efficient, it would be better if such applications were examined by the Member States located closer to the country of origin of applicants for international protection, in particular by the Member State neighbouring the country of origin.

The Sejm believes that the introduction of a regulation providing for the so-called financial solidarity and the obligation to make the so-called solidarity contribution if a Member State decides to temporarily suspend its share in the corrective allocation mechanism should be understood as a financial fine for those EU countries which refuse to admit the migrants and an attempt to put pressure on the Member States reluctant to admit refugees under the automated system for allocation mechanism. The so-called solidarity contribution of EUR 250,000 for each applicant for international protection to be paid to the Member State responsible for examining the application should be considered excessively high. Furthermore, pursuant to Article 37 (3) of the proposed regulation, a Member State temporarily suspending its share in the corrective allocation mechanism will be informed of the number of applicants for international protection for whom it would have otherwise been the Member State of allocation only at the end of the twelve-month period of not taking part in the corrective allocation mechanism. Such a regulation means that the Member State will be informed of the financial impact of suspending its share in the corrective allocation mechanism only at the end of the period of not taking part in it. This measure makes it impossible for the Member State to monitor the amount of solidarity contribution. Considering the excessively high unitary amount for calculating the solidarity contribution and the possible high scale of migration which is probable in view of the past experience, the proposed measure can potentially lead to an unsustainable financial impact for a Member State.

The Sejm draws attention to the fact that due to the high costs of solidarity contributions, the proposed global measure for all the Member States is less effective than asylum system measures which can be applied by individual Member States.

As a consequence, Sejm believes that the proposed measures presented in chapter VII of the proposed regulation should be considered to infringe the principle of subsidiarity.

To summarise - in the Sejm's opinion the Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (recast) (COM(2016) 270 final) is incompatible with the principle of subsidiarity.