

ASSEMBLY OF THE PORTUGUESE REPUBLIC
EUROPEAN AFFAIRS COMMITTEE

Opinion

COM(2016) 197

COM(2016) 270

COM(2016) 271

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PART I - INTRODUCTION

Pursuant to Article 7 of Law No 43/2006 of 25 August 2006 on the monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic on matters relating to the process of EU integration, as amended by Law No 21/2012 of 17 May 2012, and in accordance with the Guidelines for the Scrutiny of EU Initiatives approved on 1 March 2016, the European Affairs Committee has received the following:

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL TOWARDS A REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM AND ENHANCING LEGAL AVENUES TO EUROPE (COM(2016) 197).
- 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).
- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016)271).
- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) (COM(2016)272).

In view of the subject matter, the initiatives referred to above were sent to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees (CACDGL) and the Committee on Foreign Affairs and Portuguese Communities (CNECP), which voted on and approved the reports attached to and forming an integral part of this Opinion.

Under the new guidelines for the scrutiny of European initiatives, approved by the European Affairs Committee, this Committee has drafted a technical note on the initiative under examination, which will also be attached to this Opinion.

PART II - RECITALS

1. Context of the Proposals

The European Affairs Committee indicated that these four initiatives, which are three legislative acts and one communication, form part of a ‘joint package’ and fall within the scope of the European Union’s migration and asylum policy area.

The rationale behind the measures described in these documents is the same, namely to reform the common European asylum system and enhance legal avenues to Europe, as set out by the European Commission in its Communication to the European Parliament and the Council. According to the Commission ‘Migration has been and will continue to be one of the defining issues for Europe for the coming decades’; as such, ‘a continuing response to the ongoing migration and refugee crisis’ is necessary and ‘(...) applying the current rules and improving the functioning of existing tools and mechanisms is key to regaining control of the present situation’.

It should be noted that the initiatives under examination state that these measures ‘will constitute a major reform of the CEAS’ and that ‘This first package also includes a proposal for recast of the Eurodac Regulation and a proposal for establishing a European Union Agency for Asylum. The Eurodac proposal includes the necessary changes to adapt the system to the proposed Dublin rules, in line with its primary objective to serve the implementation of the Dublin Regulation. Eurodac shall also become a database for wider immigration purposes, facilitating return and the fight against irregular migration’.

2. Analysis of the Initiatives

COM(2016) 197

- This initiative relates to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL TOWARDS A REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM AND ENHANCING LEGAL AVENUES TO EUROPE.
- This Communication ‘sets out steps to be taken towards a more humane, fair and efficient European asylum policy, as well as a better managed legal migration policy’. It also states that ‘The Commission is therefore fully committed to achieving the important objective of shaping an integrated, sustainable and holistic EU migration policy’.
- The issues addressed in this Communication are:
 - **Towards a robust and sustainable common asylum policy:** inherent weaknesses of the Common European Asylum System in times of migratory crisis; addressing the structural shortcomings - five priorities: establishing a sustainable and fair system for determining the Member State responsible for asylum seekers; reinforcing the Eurodac system; achieving greater convergence in the EU asylum system; preventing secondary movements within the EU; and a new mandate for EASO.
 - **Ensuring and enhancing safe and legal migration routes:** moving towards a more managed approach to refugee protection in the EU – a structured resettlement system; a smarter and well-managed legal migration policy.
- The Communication sets out the European Commission’s aim to ‘launch a discussion on the important subject matters covered’ and ‘open a path towards a humane and efficient European migration and asylum policy based on a fair sharing of responsibilities’. Depending on how the Communication is received, suitable proposals will be put forward at a later date.

COM(2016) 270

- This initiative relates to 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).

- The aim of the initiative under examination is to work towards ‘a more sustainable approach to managing migration, both for people who need international protection and for those who move for other reasons’. Furthermore, ‘The approach aims to end irregular and dangerous movements and the business model of smugglers, and to replace these with safe and legal ways to the EU for those who need protection’ and ‘Protection in the region and resettlement from there to the EU should become the model for the future, and best serves the interests and safety of refugees’.
- According to the Proposal, it is ‘a recast of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 (‘the Dublin III Regulation’)’.
- The aim of the proposal is also to be ‘consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration COM(2015) 240’ and it is based on four pillars: ‘reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration’.

COM(2016) 271

- This initiative relates to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010.
- The aim of this initiative is to ‘provide the European Union Agency for Asylum with the necessary tools for it to develop into an agency which facilitates the implementation and improves the functioning of the CEAS (Common European Asylum System)’.
- The Common European Asylum System (CEAS) is the same throughout the European Union. Its legal basis can be found in the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation and the Eurodac Regulation. The cornerstone of the system is the fundamental right to asylum, the granting of which is an international obligation by virtue of the 1951 Geneva Convention relating to the protection of refugees.
- The Asylum Procedures Directive¹ governs the entire procedure for claiming asylum, particularly in relation to how to apply; how the claim will be examined; the help available to the asylum seeker; how to appeal and whether the appeal will allow the person to stay in the territory; what can be done if the applicant absconds and how to deal with repeated applications.
- The aim of the Reception Conditions Directive² is to ensure suitable reception conditions for asylum seekers while they wait for their claim to be examined. It

¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013.

² Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013.

ensures that asylum seekers have access to housing, food, healthcare and employment, as well as medical and psychological care.

- The Qualification Directive³ specifies the grounds for granting international protection. It contains provisions on a series of rights relating to protection from refoulement, residence permits, travel documents, access to employment, education, social welfare, healthcare, accommodation, integration facilities, as well as specific provisions for children and vulnerable persons.
- The core principle of the Dublin Regulation⁴ is that the Member State that had the greatest involvement in the applicant's entry into or residence in the EU has primary responsibility for examining their asylum claim.
- The Eurodac Regulation⁵ establishes an EU-wide fingerprint database for asylum purposes. When a person claims asylum, no matter where they are in the EU, their fingerprints are sent to the Eurodac central system.
- The initiative under examination notes that the 'proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration, which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist of reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration'.
- It also states that 'This proposal further implements the European Agenda on Migration, more specifically as regards the objective of strengthening the Union's asylum policy since the European Union Agency for Asylum will ensure a full and coherent implementation of the CEAS'.

COM(2016) 272

- This initiative relates to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).
- The aim of the initiative under examination is to amend 'the current Eurodac Regulation (EU) No 603/2013, and [extend] its scope for the purposes of identifying illegally staying third-country nationals and those who have entered the European

³ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011.

⁴ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013.

⁵ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013.

Union irregularly at the external borders, with a view to using this information to assist a Member State to re-document a third-country national for return purposes’.

- The Eurodac system enables EU countries to identify asylum seekers and persons who have been intercepted when crossing an external border illegally. By comparing fingerprints, EU countries can check whether an asylum seeker or foreigner who is in the country illegally has already claimed asylum in another EU country or whether the asylum seeker entered the EU illegally.
- Eurodac comprises a Central Unit that is managed by the European Commission, a computerised central fingerprint database, and electronic means of sending data from EU countries to the central database. Aside from fingerprints, the data sent by EU countries includes: the country of origin; the person’s gender; where and when the asylum claim was made or the person intercepted; the reference number; the date on which the fingerprints were taken; and the date on which the data were sent to the Central Unit.
- This initiative also demonstrates the intention to make Eurodac ‘a database for wider immigration purposes, facilitating return and the fight against irregular migration’.

In the light of the provisions contained in the Proposal, the following must be considered:

a) Legal basis

The legal basis of these four proposals is Article 78(1) and (2) of the Treaty on the Functioning of the European Union.

COM(2016) 197: Article 78(1) and (2) of the Treaty on the Functioning of the European Union;

COM(2016) 270: Article 78(1) of the Treaty on the Functioning of the European Union;

COM(2016) 271: Article 78(1) and (2) of the Treaty on the Functioning of the European Union;

COM(2016) 272: Article 78(1) of the Treaty on the Functioning of the European Union.

b) Principle of subsidiarity

Since this ‘joint package’ of initiatives relates to migration and asylum policy in the European Union, we take the view that the Member States are unable to achieve the aims of the proposals and the communication under examination to a sufficient degree, and that these aims can be better achieved at EU level; the European Union may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

As a result, this package of initiatives complies with the principle of subsidiarity.

PART III - OPINION OF THE RAPPORTEUR

Europe’s responses to the growing number of refugees lack coherence and pose a serious threat to the free movement of people. Furthermore, the right to asylum enshrined in the Geneva Convention is under threat and, by closing their borders, detaining people or confiscating property, a number of

countries are undermining this right. Attitudes such as that adopted by the Danish Parliament only serve to increase tensions, after similar stances were taken by Switzerland and Germany.

The number of asylum seekers in Italy is seven times higher than it was in 2013 and in the first half of August some 1 800 people coming from Italy were refused entry to Switzerland. This increase has come about precisely because countries such as Switzerland, France and Austria have rejected asylum applications, in line with the provisions of the Dublin Regulation, for which the guiding principle is that the first country that a refugee enters in the common area is responsible for processing that person's asylum claim.

As such, the European Union's asylum and immigration policy leaves much to be desired in terms of compliance with international provisions and also respect for human rights in relation to movements of asylum seekers. The proposals under examination are in line with the overall policy being pursued, one aspect of which is the centralisation of information and data as well as an increase in measures designed to enhance security and military presence at borders. Rather than putting forward a humanitarian solution to address the current situation, the EU has increased the budget allocated to strengthening external borders and border control mechanisms, even involving NATO in this border security operation, which is dominated by large companies in the arms industry.

On the other hand, allowing Member States to share police and court files and records relating to the movement of people has serious consequences in terms of rights, freedoms and guarantees.

In the light of this, and given the concerns expressed above, the Bloco de Esquerda abstained from voting on this report prepared by the MP Pedro Delgado Alves (PS) at the first meeting of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees and voted against the report prepared by MP Filipe Lobo D'Avila (CDS-PP), which was put to the vote at the second meeting of the Committee on Foreign Affairs and Portuguese Communities.

Although from a legal and technical standpoint the initiatives under examination may not be in breach of the subsidiarity principle, many doubts remain concerning the political decisions contained in the initiatives; not only do they require very close monitoring, they may also be at odds with provisions on the international protection of fundamental rights.

In the light of the above, it is recommended that the implementation of the proposals be monitored closely, in order to ascertain whether or not they have a negative impact on the movement of people, specifically migrants and asylum seekers.

PART IV – OPINION

In the light of the information set out above, the European Affairs Committee is of the opinion that:

- 1 - The initiatives under examination do not breach the principle of subsidiarity, as the proposals relate to a matter of international concern and to a principle involving the movement of people;
- 2 - Issues related to migration and the need to provide solutions for refugees are matters that merit this Committee's attention, and they should therefore be duly monitored;
- 3 - This concludes the scrutiny of this initiative.

Palácio de São Bento, 26 September 2016

Rapporteur
(Isabel Pires)

Chairperson of the Committee
(Regina Bastos)

PART V – ANNEX

- Reports from the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees (CACDGL)
- Committee on Foreign Affairs and Portuguese Communities (CNECP)
- Technical note from the European Affairs Committee.