

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)

Pursuant to the Senate Rule 144(1)

and (6)

Submitted to the President on 17 October

2016

The Committee,

Having examined the proposal for a Regulation, pursuant to Senate Rule 144(1) and (6),

Whereas:

The proposal recasts the Regulation (EU) of the European Parliament and of the Council No. 604/2013 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),

Reralling that:

On 16 April 2016, the European Commission adopted a Communication for the reform of the Common European Asylum System (COM(2016)197), providing an overall strategy to establish a stable system to identify which Member State is responsible for examining an application for international protection, reinforce the Eurodac system, achieve closer convergence within the asylum system, and establish an enhanced mandate for the European Asylum Support Office (EASO). In its Communication, the European Commission pointed out the need to abandon a system which places a disproportionate burden on certain Member States, and encourages uncontrolled migration towards other Member States;

To implement this reform plan, on 4 May, 2016 the European Commission issued a package of three proposals for the reform of the so-called Dublin III Regulation (EU) No 604/2013 (COM(2016) 270), Regulation (EU) of the European Parliament and of the Council No. 603/2013 of 26 June, 2013 ('Eurodac')(COM(2016) 272) and Regulation (EU) of the European Parliament and of the Council No. 439/2010 of 19 May 2010, instituting the European Union Agency for Asylum EASO (COM(2016) 271), which it defined as the first stage leading to a global reform of the Common European Asylum System;

On 13 July 2016, the European Commission issued a further package of four proposals to complete the reform of the Common Asylum system, namely: a proposal to institute a common procedure for international protection (COM(2016) 467); a proposal to reform the directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, (COM(2016) 466); a proposal to revise the directive laying down standards for the reception of applicants for international protection, to increase applicants' integration prospects and decrease secondary movements (COM(2016) 465); a proposal establishing a structured Union Resettlement Framework to allow them to enter the Member States legally, gradually reducing the incentive for irregular migration (COM(2016) 468),

And considering that:

The fundamental principle of the current Dublin III Regulation is that

the responsibility for examining asylum applications lies primarily with the Member State having the main role regarding the entry or stay of the asylum seeker. The criteria for establishing this responsibility are, in hierarchical order, family connections, the recent possession of a visa or residence document in a Member State, and the regular or irregular entry of the applicant into the European Union. Article 13 provides that where it has been established, on the basis of proof or circumstantial evidence, that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered is to be deemed responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place;

The European Commission emphasised the fact that the Dublin system in its present form was not designed to ensure a sustainable sharing of responsibility for applicants across the Union. This had led to situations in which a limited number of individual Member States have had to deal with the vast majority of asylum seekers arriving in the Union, putting the capacities of their asylum systems under strain and leading to some instances of disregarding the EU rules. It noted that the effectiveness of the Dublin system was being undermined by a set of complex rules on the determination of responsibility as well as lengthy procedures, particularly in the case of the current rules which provided for a shift of responsibility between the Member States;

External studies were commissioned to evaluate the Dublin system to prepare the proposal. The most critical shortcomings included the large numbers of secondary movements from the State of first entry towards other Member States. Indeed, 24% of the applicants in 2014 had already lodged previous applications in other Member States, suggesting that the Regulation had had little, or no effect on attaining this objective, with asylum-seekers asylum-shopping as a means of entering one particular Member State of their choice. This had largely been due to the fact that the existing Dublin III Regulation does not take due account of the ability of the Member States to receive applications, particularly in the case of those which are under the greatest pressure from migration flows, and places a disproportionate burden of responsibility on the Member States lying around the Union's external borders, by virtue of the prevailing application of the country of first entry criterion. The criteria referring to family connections are less frequently applied mainly because of the difficulties of tracing family members and of finding any documentary evidence of family ties;

The European Commission consulted the Member States, some of which called for a permanent system for burden-sharing by means of a distribution key, while others were in favour of keeping and streamlining the current system, including the irregular entry criterion.

The main amendments set out in the proposal for a Regulation are designed to strengthen the mechanism of attributing responsibility of the Member States of first entry, by offsetting it with an automatically triggered corrective solidarity mechanism as soon as a Member State carries a disproportionate burden of asylum applications,

Noting, in particular, that the proposal for a Regulation:

Introduces, in article 3(3) of the Dublin Regulation, the obligation to ascertain whether the application for international protection is inadmissible when the applicant is a national of a State considered to be a first country of asylum or a safe third country, to which the applicant must be returned;

Explicitly provides, in article 4, that where a person who intends to make an application for international protection has entered irregularly into the territory of the Member States, the application must be made in the Member State of that first entry and the applicant must cooperate to enable that State to be identified. The new article 6 provides that the applicant is not entitled to choose which Member State is competent to examine the asylum application;

Provides, in article 5, that during the phases in which the procedures provided by this Regulation are taking place, the applicant shall not be entitled to the reception conditions set out in Articles 14 to 19 of the Directive of the European Parliament and of the Council 2013/33/EU of 26 June, 2013 including the right of access to the labour market, and education for their children in any Member State other than the State in which they must be present;

Has deleted, in the new article 9, the requirement that the Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant. However, it also extends the definition of family members in article 2 to include the applicant's siblings, family members acquired after the departure from the country of origin but before entry into the Member State;

Has deleted, in the new article 15, the provision that responsibility of the State of first entry shall cease 12 months after the date on which the irregular border crossing took place, and the provision that the State with responsibility is based on the fact that the applicant has been living there continuously for at least five months;

Has introduced, in the new articles 34 et seq., the corrective allocation mechanism, burden-sharing between the Member States and rapid access by asylum seekers to procedures for the grant of international protection in the event that one Member State is faced with a disproportionately high number of applications for international protection for which it is the Member State deemed responsible under this Regulation. The mechanism automatically applies where the automated system indicates that the number of applications for international protection for which a Member State is responsible, in addition to the number of persons effectively resettled, is higher than 150% of the reference number for that Member State as determined by a specific reference key. The European Union Agency for Asylum shall establish the reference key which it calculates every year on the figures for the criteria for each Member State (population size and GDP) according to Eurostat figures. The Member States will have the possibility of not taking part temporarily, for a 12-month period, in the corrective allocation mechanism, but in that case they will be required to make a solidarity contribution of 250,000 euro for each applicant who would otherwise have been allocated to the Member State determined to

be responsible for examining the application,

Considering, moreover, the Government Report forwarded on 25 July 2016, pursuant to article 6(4) of law 234 of 24 December 2012,

Mindful, in particular that:

The Government has deemed this proposal to be one of the Union's instruments of particular national interest, and that its Report provides an overall negative assessment of the proposal, in that considers that it fails to contribute to the equitable burden-sharing of migrants between the Member States, but on the contrary tends to strengthen and broaden "from various points of view the State of first entry criterion, further aggravating the difficulties faced by border States such as Italy".

Expresses an unfavourable opinion.

With regard to compliance with the principles of subsidiarity and proportionality the document is flawed in the following respects:

The purposes of the proposal, that is to say, to ensure fair responsibility burden-sharing between the Member States, especially at times of crisis, and to curb the secondary movements of Third country nationals between the Member States, cannot be achieved sufficiently by the Member States acting individually. But the measures and mechanisms for which provision is made here fail to meet the need to address the present unprecedented migration levels as a Europe acting as a whole, and the overall effects of the amendments proposed fail to achieve the two main stated objectives;

The introduction, in new article 3 of the proposal, of the obligation to undertake a preliminary examination before activating the Dublin procedure, relating to the admissibility of the application made by the national of a safe Third country or State of first entry, would entail a considerable increase in the number of applications to be examined by a country of first entry, like Italy. Moreover, this mechanism would increase the number of cases in which Italy would be responsible, which would have consequences in terms of the period of stay and the repatriation of people without the right to international protection. These increasingly burdensome aspects would have counter-productive consequences on the very purposes of the proposal;

The new article 10(5) dealing with children, provides that in the event that a child has no family members, the responsibility for the child lies with the Member State in which the child first applied for international protection, unless it has been demonstrated that this is not in the best interests of the child, and that in the event of asylum applications filed in several Member States, the responsibility lies with the Member State in which the application was made for the first time. In this connection, the Committee feels that it is in the best interests of children that responsibility should lie with the Member State in which the child is living at the time the application is made;

The amendments introduced to the new article 15, that is to say, the cessation clause whereby the Member State's responsibility shall cease to

apply 12 months after the date on which the first irregular border crossing took place, and the provision that the State with responsibility is the one in which the applicant has been living continuously for at least five months illegally, and the deletion of article 19 which provided that the responsibility of a Member State ceases if the foreign national has voluntarily left the territory of the Member State for a given period of time, and the principle of sole permanent responsibility introduced by the new article 3(5), are measures which strengthen and broaden the first entry criterion which the proposal for a Regulation itself considers to be one of the causes of the excessive burden placed on the border States in terms of taking in, pre-identifying and managing repatriation; it is therefore flawed in the face of the very objectives which the proposal sets out to attain. It is therefore necessary to revise the proposal, in order to establish mechanisms for identifying the State having responsibility, ensuring that priority is no longer given to the criterion of the State of first entry, but to a distribution criterion which reflects the Member States' size, wealth and capacity to absorb the asylum applicants;

With regard to the corrective allocation mechanism provided by articles 34 et seq, the Committee deems it necessary to substantially lower the threshold for triggering the allocation mechanism, and to delete the possibility of replacing participation in the mechanism with the payment of a financial contribution, to effectively pursue the very purpose of the proposal, of ensuring the equitable burden-sharing of asylum applicants in the territory of the Member States. In this connection, the Committee is seriously baffled by paragraph 4 of the new article 35, under which the European Union Agency for Asylum is required to establish the reference key to be attributed to each Member State for the distribution of asylum-seekers based on the corrective allocation mechanism, and to adapt the key annually based on Eurostat figures;

The Committee, moreover, notes that:

One year after the launching of the plan to relocate asylum seekers among the Member States, the overall numbers of applicants actually transferred from Italy to other Member States is still only 3 percent of the target, namely 1,196 people, out of the planned total of 39,600;

Between 12 July and 27 September 2016, 2,242 people were removed from Greece, but only 353 from Italy;

The relocation plan is therefore seriously behind schedule, in that according to the commitments undertaken by the European Union in September 2015, 160,000 people were supposed to have been relocated from Italy, Greece and Hungary to other European States by September 2017. The target was to reach at least 6,000 persons relocated every month. But even after one year, we are still stuck at 3 percent of the planned total. At the present time, the number of places provided by member states for the relocation programme has stopped at 13,585 (3,809 for Italy and 9,776 for Greece);

The European Commission's reform proposal sets out to attain the aforementioned targets and to make up for the evident failure of the "Dublin system", while leaving essentially unchanged the hierarchy of the Dublin criteria, introducing a corrective allocation system for the burden-sharing of

responsibilities between the Member States which would give rise to the problematic elements of the temporary relocation mechanisms currently in force, while imposing a series of obligations on the asylum seekers (and penalties in the event of failure to comply) in order to restrict their movements within the area of the States bound by the Dublin Regulation;

The proposal issued on 4 May by the European Commission as “the reform of the Dublin III Regulation” is anything but! Apart from a few improvements made to the procedures, the transfer of asylum seekers to the potentially responsible Member State has been burdened down by the introduction of yet more intermediate procedural stages; except for the expanded definition of “family members”, none of the criteria for establishing the responsible Member State have been touched upon, whereas the corrective allocation mechanism, as it is structured here, is likely to fail in the way the temporary relocation mechanisms had previously failed;

The proposal to reform the Dublin Regulation does not therefore appear to be appropriate to guarantee the Commission’s declared objectives in the introduction, namely, to rapidly identify the responsible Member State, and hence ensure quick access of asylum applicants to the asylum procedure, and a more equitable sharing of responsibilities between the Member States and combating abuses and the secondary movements of asylum-seekers.