

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)

PROPOSED FINAL DOCUMENT

The Committee on Constitutional Affairs of Italy's Chamber of Deputies, having examined pursuant to Rule of Procedure 127, 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),

Whereas:

In recent years, the European Union has had to deal with an ever-increasing inflow of migrants, and has found it difficult to come up with coherent and comprehensive strategies to manage what has by now developed into a structural phenomenon rather than a one-off emergency;

In particular, the delay in developing effective policies at a European level has inevitably placed considerable and unsustainable pressure on those countries, Italy among them, that, for evident geographical reasons, are most exposed to the inflow of migrants;

The manifest inequality that has emerged within the European Union and the repeated tragic accidents causing the deaths of thousands of people trying to reach the EU by sea have finally induced the European Commission to propose a set of measures for a fairer sharing of the burdens associated with external border controls, rescue operations, first reception activities, and the management and processing of asylum applications;

The gravity of the situations that have arisen, not only in Italy but also in Greece and along the so-called Balkan corridor, has persuaded the European Commission to activate a system for the redistribution (relocation and resettlement) among Member States of persons applying for protection, and thus to apply in practice the precepts of the European Treaties, which affirm that European migration and asylum policy shall be guided by principles of solidarity and shared responsibility;

The practical implementation of these measures, however, has been very disappointing owing to the reluctance of a number of Member States to accept the asylum-seekers assigned to them;

Even so, the European Commission has essentially and quite rightly reaffirmed its policy approach, and, following the same rationale as before, has made several proposals, including that being reviewed here, for a general overhaul of the so-called Dublin Regulation, in which it sets out criteria for the division of responsibilities among Member States for dealing with asylum applications in the EU;

Many of the measures set out in chapter VII of the proposal are therefore to be commended, for, while they do not completely overturn the existing Dublin Regulation's rules on the responsibilities of Member States relating to asylum requests (nor, in particular, do they eliminate the concept of the country of first entry), they do nonetheless refer to a new automatic redistribution mechanism whenever a Member State finds itself dealing with a disproportionate number of asylum applications. When activated, the mechanism triggers a quota allocation system based on the size and wealth of each Member State;

A considerable cause of concern, meanwhile, is that the same countries that have been reluctant to comply with the European Commission's previous relocation and resettlement programmes, namely the Czech Republic, the Slovak Republic, Romania, Hungary and Poland, are now responding negatively both in the EU Council and in their respective national parliaments, which have issued reasoned opinions on this proposal for a Regulation;

The European Commission and the most exposed countries must therefore take very robust action to enforce the full implementation of the decisions already taken for the more equitable distribution of migration flows and of the related asylum applications;

We also find merit in the provisions set out in chapter VI of the proposal to speed up both the processing of applications for protection and the filing of appeals submitted by asylum-seekers;

Despite its positive aspects which might entail an improvement on current rules, the proposal contains however several critical deficiencies that preclude a positive assessment. We are particularly and deeply concerned at the provisions of article 3, which affirms that the first Member State in which an asylum application is lodged shall be required to consider the admissibility of the request. This requirement, which does not form part of the current legislation, is liable to impose an additional administrative burden on the Member State of first arrival, including Italy;

For the same reasons, we are very concerned about the provision stipulating that the same Member State would remain responsible for examining any further representations or subsequent applications from the applicant, irrespective of whether the applicant has left the territory of the Member State;

A careful review also needs to be made of the provision, set forth in article 10 of the proposal, concerning unaccompanied minors, according to which the

Member State responsible shall be that where the unaccompanied minor first lodged his or her application for international protection, unless, in accordance with the most recent decisions of the Court of Justice, it is demonstrated that it would not be in the best interests of the minor. Here again, there is a risk of aggravating the burden weighing on the Member State of first arrival;

Observing that, with respect to the aforementioned solidarity mechanism for the distribution of asylum-seekers as set forth in Chapter VII of this proposal, the threshold of 150 per cent of the reference number (above which the automatic redistribution mechanism is triggered) needs to be considerably lowered so as to grant countries of first entry greater scope for invoking the relocation and redistribution arrangements, and noting that the redistribution mechanisms also need to be revised so that they include other reference parameters such as the unemployment rate, the overall level of migratory pressure, the costs borne by the Member State from 2013 to today, and the public finance situation of the recipient country;

Observing, moreover, that: the provision under which a Member State may avoid the obligation to participate in the redistribution mechanism in exchange for the payment of a fine of €250,000 for each rejected asylum-seeker is completely unacceptable as being clearly inconsistent with the principles of solidarity and shared responsibility enshrined in the Treaties; participation in the relocation scheme should remain mandatory up to a fixed threshold – the threshold here proposed is 75% – and the right of a country to indemnify financially for its non-participation in the relocation scheme should be restricted to the non-compulsory portion only; alternatives to relocation should always be regulated according to specific transparent and pre-determined mechanisms, and should thus preclude all individual agreements and decisions, while any failure to participate in the relocation scheme should also be sanctionable by the Commission through an infringement procedure;

Noting that, as already indicated above, the proposed text needs in any case to be amended so as to ensure that the Member State of first entry is not required to carry out a preliminary assessment of the admissibility of an application, since such a requirement is more likely to lengthen than to shorten the waiting times for the examination of asylum applications;

Remarking that changes also need to be made to article 3, which determines the scope of the responsibilities of a Member State during the different phases of the process and in the presence of new facts. The *de facto* result of these provisions is to broaden the application of the country-of-first-entry principle, the consequence of which is to penalise frontier Member States, including Italy;

Underscoring that the criteria laid down in Chapter III for determining the responsible State must be amended so that the redistribution key is primarily

based not on whether a Member State is the country of first entry, but, rather, on its size, wealth and absorption capacity;

Noting that changes must be made to the provisions contained in article 10 relating to asylum applications by minors to bring them into line with the judgments handed down by the Court of Justice of the European Union (with particular reference to the decisions on Cases C-648/11 and 648/2013), according to which, when an unaccompanied minor applies for asylum in more than one Member State, responsibility for processing the request falls to the Member State in which the minor is located;

In view of the essential nature of the amendments that we have proposed above to the document under examination, and stressing that unless these amendments are included, approval of the document itself is not possible;

Mindful that the present final document needs to be transmitted promptly to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council;

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A NEGATIVE OPINION