



15.10.2015

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion on the proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending 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
(COM(2015)0450 – C8-0269/2015 – 2015/0208(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

The National Council of the Slovak Republic has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

**Committee of the National Council of the Slovak Republic
for European Affairs**

73rd Meeting
CRD-1807-1/2015-VEZ

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Resolution

of the Committee of the National Council of the Slovak Republic on European Affairs

Delivered on 30 September 2015

Regarding

the proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending 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 (COM(2015)450)

The Committee of the National Council of the Slovak Republic on European Affairs

Having regard to the Treaty on European Union, and in particular Article 5 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 78(2)(e) thereof,

Having regard to the Declaration of 24 June 2015 of the National Council of the Slovak Republic on Solving Migration Challenges Currently Faced by the European Union,

Acting in accordance with the Protocol on the application of the principle of subsidiarity and proportionality,

A. Welcomes the majority of proposals submitted by the European Commission within the second migration package, in particular:

– **Its emphasis on a more effective return policy** by identifying migration issues as a priority in negotiations with third countries, by presenting a draft regulation that will boost the Schengen Information System by making it obligatory for Member States to enter into the SIS a record of the return decision, and by proposing a common European list of safe countries of origin,

– **Its attempts to address the root causes of migration** by seconding European migration liaison officers to EU delegations in key third countries, by organising high-level conferences with the Western Balkans (Conference on Western Balkans migration route) and with the EU's African partners (Valletta Summit), and by proposing to create an emergency trust fund for stability and for addressing the root causes of irregular migration in Africa;

B. Takes note

Of the proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending 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

C. Approves the reasoned opinion as follows:

Article 5 of the Treaty on European Union states that *‘the institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality’*, and that *‘under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.’*

The legal basis for the proposal is Article 78(2)(e) of the Treaty on the Functioning of the European Union, which states that *‘for the purposes of paragraph 1, the European Parliament and the council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising: [...] (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum of subsidiary protection.’* Paragraph 1 of the Article states that *‘the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to **offering appropriate status** to any third-country national requiring international protection and **ensuring compliance with the principle of non-refoulement.**’*

The main objective of the regulation proposal is to introduce **a permanent derogation** from the principle laid down by the Dublin Regulation, according to which an application for international protection should be examined by the Member State designated as responsible. As part of the permanent derogation, the Commission proposes to introduce, in times of crisis, a mandatory distribution key for determining which state should take responsibility. That objective, however, is governed by Article 78(3) of the Treaty on the Functioning of the European Union, which states that *‘in the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt **provisional measures** for the benefit of the Member State(s) concerned.’* According to EU primary law, therefore, these crisis situations should be solved by adopting provisional measures rather than introducing permanent measures (a mandatory distribution key) as the Commission proposes. As noted above, under the principle of subsidiarity, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. It is apparent that by introducing a permanent mandatory distribution key instead of adopting provisional measures in emergency situations, the draft regulation goes beyond the extent necessary to achieve the objective and thus violates the principles of subsidiarity and proportionality.

Moreover, based on the legal basis chosen, it is clear that the aim of the draft regulation must be to give equivalent legal status to all third-country nationals requiring international protection **or** to comply with the principle of non-refoulement by adopting criteria and mechanisms for determining the Member State responsible for examining an application for asylum or subsidiary protection. The determination of the state responsible for examining applications for international protection is already adequately covered in the existing Dublin Regulation, and it is therefore not necessary to modify the current criteria by introducing the derogation. The objective set out by the legal basis of the proposal is therefore fully achieved and valid by means of the Dublin Regulation. The Union shall act **only if** the objectives cannot be sufficiently met by the Member States at another level. This argument also shows that the principle of subsidiarity is infringed by the regulation proposal.

In assessing the activities of the Union in terms of compliance with the principle of subsidiarity it is also necessary to take into account the effects of the proposed action. It is more than likely that the mandatory distribution key will not help to solve the migration crisis or to stop migration flows to the EU. Recent cases also show that migrants have already chosen their country of destination and are willing to do practically anything to reach it. 'Assigning' migrants to a Member State against their will may cause safety hazards and arouse tensions between the incoming migrants and the native population of the Member States. What is more, if migrants are relocated against their will, it will become virtually impossible to prevent secondary movement without restricting free movement of persons. While the Commission presents, in paragraphs 16 to 18 of the regulation, possible measures to prevent this from happening (detailed information about the consequences of irregular movement, a ban on the issuance of national travel documents to applicants, restrictions on the provision of financial incentives, etc.) we do not consider these steps sufficient.

D. Authorises

The Chair of the Committee

to inform the Speaker of the National Council of the Slovak Republic, the European Parliament, the European Commission and the Council of the European Union of the reasoned opinion.

Viera Mazurová

Verifier

Ľuboš Blaha

Chair of the Committee