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Committee on Legal Affairs

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NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Sejm of the Republic of Poland's reasoned opinion on 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 stateless person
(COM(2016)0270 – C8-0173/2016 – 2016/0133(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 they consider that the draft in question does not comply with the principle of subsidiarity.

The Sejm of the Republic of Poland has sent the attached reasoned opinion on the aforementioned proposal for a directive.

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

ANNEX

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 incompatible with the principle of subsidiarity

On the basis of 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 referred to in Article 5(3) of the Treaty on European Union. The proposal violates the principle of subsidiarity given that it does not provide any certainty that the objectives of the proposed action would be better achieved at European Union level than by measures taken at the national level.

A reasoned opinion stating why the Sejm takes the view that the draft legislative act does not comply with the principle of subsidiarity is attached to this decision.

SPEAKER OF THE SEJM
Marek Kuchciński

Annex to the resolution
of the Sejm of the Republic of Poland
of 21 October 2016 (item ...)

Reasoned opinion of the Sejm of the Republic of Poland of 21 October 2016 presenting the reasons for which the Sejm takes the view 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 referred to in Article 5(3) of the Treaty on European Union (TUE). The proposal violates the principle of subsidiarity given that it does not provide any certainty that the objectives of the proposed action would be better achieved at European Union level than by measures taken at the national level.

The declared objective of the proposed regulation is to provide a solution in cases when a Member State receives a disproportionately high volume of applications for international protection, for which it is responsible under the proposed regulation. This objective is to be achieved by introducing a mechanism for the redistribution of refugees between Member States – the corrective allocation mechanism (Article 34-36 of Chapter VII of the proposed regulation, 'Corrective Allocation Mechanism') – which will offer the possibility to automatically trigger the instrument in response to migratory pressure, in exceptional and emergency situations.

The mechanism is to be composed of an automated system into which asylum applications would be entered. The corrective allocation mechanism is to be triggered automatically for a Member State whenever the number of applications for international protection for which that Member State is responsible on the basis of the criteria set out in the proposed regulation, plus the number of persons already resettled, exceeds the threshold of 150% of the 'reference number' for that country. The 'reference number' (Article 34(3)) will be established annually for each Member State by applying the specific 'reference key' (Article 35) drawn up for each Member State in view of the number of asylum applications for which that Member State has been responsible, 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% weighting) and the total GDP of the Member State (50% weighting).

When the mechanism is triggered, all new applications lodged with the Member State experiencing migratory pressure, following the admissibility check but before the Dublin check, will be reallocated to Member States which 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. A notification of this intention would have to be entered into the automated system mentioned above. In that case, the Member State concerned would have to make a 'solidarity contribution' (Article 37(3)) of EUR 250,000 for each applicant for whom it would otherwise have been the Member State responsible under the corrective allocation mechanism.

The Sejm takes the view the proposal will not make it easier to meet the objective – as required under 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 if the Member States were to act under their own rules.

The Sejm emphasises that the 'reference key' does not take account of the extent to which individual Member States are giving operational support to other Member States or the fact that a Member State may encompass a section of the EU's external border, nor does it take into account Member States' reception and integration capacities. All these elements are, however, extremely important in assessing the current and potential burden borne by Member States in the context of the migration crisis.

What is more, although the use of automated allocation of persons seeking international protection between the Member States may guarantee order in terms of the quantitative management of migratory flows, it will lead to a lowering of management standards in terms of quality. To use a hypothetical example, let us assume that – as a result of the automated corrective allocation mechanism – Poland would be required to take in applicants seeking international protection. Let us assume that those applicants entered the EU via a Member State located far away from Poland from that State's neighbouring country. Shortly afterwards, it might be the case that Poland would have to deal with significant migratory pressure from citizens fleeing a country near to Poland, exceeding the capacity of the Polish asylum system. If the automated corrective allocation mechanism were to be triggered, the asylum seekers from Poland's neighbouring country would be sent away to Member States further away. A better solution would be to host asylum seekers in a Member State neighbouring the country of origin, given the wider availability of interpreters of the language of the neighbouring country compared with a Member State further away, closer cultural ties and a better understanding of the neighbouring country's situation. This will make it easier to grant international protection and integration activities in the future.

The Sejm takes the view that the application of the automated corrective allocation mechanism may result in applicants for international protection being sent to Member States located further away from their country of origin for the processing of their applications for international protection. Meanwhile, for the application examination process to be more efficient, it would be better if applications were examined by Member States located closer to the country of origin of applicants for international protection, in particular by a Member State neighbouring the country of origin.

The Sejm takes the view that the introduction of a regulation requiring 'financial solidarity' and 'solidarity contributions' if a Member State decides to temporarily suspend its share in the corrective allocation mechanism should be understood as a financial penalty for

EU countries which refuse to admit migrants and as an attempt to exert pressure on Member States that are reluctant to admit refugees under the automated allocation mechanism. The 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, under Article 37(3) of the proposed regulation, a Member State temporarily suspending its share in the corrective allocation mechanism is to 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 during which it did not take part in the corrective allocation mechanism. That rule 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 suspension. This makes it impossible for Member States to monitor how much it should be paying in solidarity contributions. Considering the excessively high unitary amount for calculating the solidarity contribution and the high levels of migration that are likely, if the current trend continues, the proposed measure could lead to unmanageable financial repercussions for a Member State.

The Sejm draws attention to the fact that, due to the high cost of solidarity contributions, the proposed EU-wide measure would be less effective than the measures for granting asylum that could be applied by individual Member States.

As a result, the Sejm takes the view that the proposed measures set out under chapter VII of the proposed regulation violate the principle of subsidiarity.

To summarise, the Sejm takes the view 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.