



21 October 2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: The Romanian Chamber of Deputies' 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 a stateless person (recast)
(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 Romanian Chamber of Deputies 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.

ROMANIAN PARLIAMENT

CHAMBER OF DEPUTIES

DECISION

on the adoption of the Romanian Chamber of Deputies' reasoned opinion regarding 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

Under Articles 67 and 148 of the Romanian Constitution (republished), Law 373/2013 on cooperation between Parliament and Government regarding European affairs and Articles 160 - 185 of the Rules of Procedure of the Chamber of Deputies (republished),

the Chamber of Deputies has adopted the following Decision

Sole Article. - taking into account the Opinion No 4c-1 9/1016 adopted by the Committee on European Affairs, at its meeting on 20 September 2016, the Chamber of Deputies:

1. Notes compliance with the conditions established by the treaties, according to which, the proposal may be subject to the parliament control of subsidiarity: it is a legislative text and belongs to the competences not conferred exclusively upon the Union, within the meaning of Articles 4(1) and 5(2) of the EU Treaty, and Article 2(6) of the Treaty on the Functioning of the European Union.
2. Notes the obvious cross-border aspects, which justify action at Union level to achieve the desired objectives if they are genuinely in line with the values and principles embodied in the EU Treaties, as well as with the legislation and with the major political commitments made by the European Union to achieve the area of freedom, security and justice.
3. Maintains the objections, the observations and the recommendations in the reasoned opinion and in the opinion of the Romanian Chamber of Deputies on examining 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 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.
4. Notes that the proposal to recast the Dublin Regulation comes within three years of adoption of the latter and that implementation of the act concerned has been assessed upon request by the European Commission, but the resulting report is not considered to reflect the official position of the European institution concerned.

Notes also the absence of an impact study accompanying the present proposal for a regulation and containing various choices of action envisaged.

5. Taking into account the objective set out by the proposal for a regulation, namely rationalisation of the rules in the Dublin Regulation and adding to these rules a new corrective allocation mechanism, aimed to manage cases in which the asylum systems of the Member States are subject to a disproportionate pressure, reiterates the inadequacy of the corrective mechanism to achieve the objective of a viable management of the migration pressures upon the European Union. First of all, the inefficiency of the mechanism seems to come from the presumable adequacy of the asylum procedures or, on the contrary, the Member States subject to a disproportionate pressure will carry on facing systemic deficiencies, leading to the impossibility of transferring the international protection applicants, confers a permanent character to corrective mechanisms, which, according to Article 78(3) of the Treaty on the Functioning of the European Union, should be, by definition, temporary and reduces the possibility to let the international protection applicant express their own will regarding the chosen Member State. In this respect, as the Chamber of Deputies has shown in their opinion on the communication ‘Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe’ COM(2016) 197, any proposal for redistribution of the international protection applicants must take into account the specificity and capacity of the Member States.

6. Secondly, in the absence of an adequate evaluation, requests clarification on the reason why the early warning, preparedness and crisis management mechanism, within Article 33 of the Dublin Regulation or Directive 2001/55, has not been activated yet. In this context, it would be desirable to evaluate, in advance, the temporary emergency systems for the transfer from Italy and Greece of 160 000 persons who need international protection, whose transfer is covered by the two decisions adopted by the Council of the EU on 14 September, and 22 September 2015, respectively (Decisions No 2015/1523 and No 2015/1601).

7. Considers that the corrective allocation system does not comply with the proportionality principle either. It is unclear how a possible reference key, such as the one in Article 35 of the proposal for a regulation, could help to achieve the objective of viable management of migration towards the European Union. The Commission has not proved how the provisions, which are to establish that mechanisms comply with the principle of proportionality and the Explanatory Memorandum and the Preamble, are confined to stating that the provisions do not exceed what is necessary to achieve the objective of efficiently addressing the situation.

8. Considers that any proposal to have international protection applicants redistributed among the Member States must take into account the specificity and capacity of the Member States, it being obvious that an automatic corrective mechanism of allocation does not take into account the existing circumstances and infrastructure in every Member State.

9. In this context, considers that a fair sharing among the Member States of the responsibilities regarding migration cannot start from financially sanctioning some Member States, which may themselves face difficulties, such a sanctioning measure being set out under Article 37 of the proposal for a regulation. According to the spirit of the European Union, as repeatedly stated by the Chamber of Deputies, solidarity should not be invoked to address particular situations, and willingness is the only guarantee of successfully managing

irregular immigration and secondary movement.

10. Notes the fact that the proposal for a regulation does not justify the calculation of the so-called solidarity contribution to be imposed upon the Member State which would not accept an international protection applicant.

11. As regards fighting secondary movements of third country nationals among the Member States, considers that the proposed tools in this proposal are not fully adequate to achieve that objective. On the one hand, there is no proof of how the extension of the definition of the family member, under this proposal for a regulation, compared to definitions in other acts of the Union Law, to include the applicant's brothers or sisters, with a view to facilitating their reunification, contributes to reducing secondary movements. On the other hand, it is not clear to what extent inclusion in the definition of families formed outside the origin country, but before arrival on the territory of the Member State, could reduce the incentives of some of the secondary movements of asylum applicants to the EU territory.

12. Considers that uncertainties affecting the relationship between the proposal to recast the Dublin Regulation and the proposal for a regulation to establish a crisis transfer mechanism (COM(2015)450) will lead to an inconsistency in the future rules in the area of the Common European Asylum System. Those uncertainties are generated by the fact that the scope is, to a great extent, common to the two regulations.

13. Considers 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 achieving the objective and thus violates the principles of subsidiarity and proportionality.

14. Considers that, since the proposal for a regulation has not enough added value, thus violating the principle of subsidiarity, issuance of a reasoned opinion is necessary.

This decision was adopted by the Chamber of Deputies in the meeting of 27 September 2016, in compliance with the provisions of Article 76(2) in the Constitution of Romania, republished.

President of the Chamber of Deputies

Florin Lordache

Bucharest, 27 September 2016

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