



24 October 2016

## **NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY**

**Subject:** Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016)0271 – C8-0174/2016 – 2016/0131(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.

Please find attached a reasoned opinion from the Chamber of Deputies of the Parliament of the Czech Republic on the above-mentioned 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.

Parliament of the Czech Republic  
CHAMBER OF DEPUTIES  
2016  
7th parliamentary term  
308.  
RESOLUTION  
of the Committee on European Affairs at its 55th meeting  
of 22 September 2016

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) (document code 8715/16, COM(2016) 270 in its final wording),

on the proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No. 439/2010 (document code 8742/16, COM (2016) 271, final),

on the proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EC) 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) (document code 8765/16, COM(2016) 272, final).

The Committee for European Affairs of the Chamber of Deputies of the Parliament of the Czech Republic, after hearing information from the Deputy Minister of Interior, Ms Monika Pálková and news reports from Member of Parliament Mr Ondřej Benešík and following a debate on the matter,

approves the decision annexed to this resolution.

Dana Váhalová, by own hand  
certifier

Ondřej Benešík, by own hand  
Chair and Rapporteur

Annex to Resolution No 308

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, Council No 8715/16  
Interinstitutional file 2016/0133/COD

Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

COM(2016) 271 final, Council No 8742/16  
Interinstitutional file 2016/0131/COD

Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [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] , for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)

COM(2016) 272 final, Council No 8765/16  
Interinstitutional file 2016/0132/COD

– Legal basis:

Article 294 and Article 78(2) of the Treaty on the European Union (COM(2016) 270 final).

Article 294 and Article 78(1) and 78(2) of the Treaty on the European Union (COM(2016) 271 final).

Article 294, Article 88(2), Article 79(2), Article 87(2) and Article 78(2) of the Treaty on the European Union (COM(2016) 272 final).

– Date of submission to the Chamber of Deputies by the Committee on European Affairs:

11. 5. 2016

– Date of hearing by the Committee on European Affairs:

28. 6. 2016 (phase 1)

– Procedure:

Ordinary legislative procedure.

– An interim opinion of the Government (pursuant to Section 109a(1) of the Rules of Procedure of the Chamber of Deputies):

Dated 1 June 2016 and served to the Committee for European Affairs on 28 June 2016 via the ISAP (COM (2016) 270 final).

Dated 23 May 2016 and served to the Committee for European Affairs on 28 June 2016 via the ISAP (COM (2016) 271 final).

Dated 24 May 2016 and served to the Committee for European Affairs on 28 June 2016 via the ISAP (COM (2016) 272 final).

– Evaluation of the principle of subsidiarity:

There was a conflict found in proposal COM(2016) 270 final with the principle of subsidiarity. The other two proposals conform with the principle of subsidiarity.

– Justification and subject:

The submitted proposals are part of the first legislative package, with which the Commission launched a comprehensive reform of the Common European Asylum System (CEAS). These changes are designed to respond to the ongoing asylum and migration crises in the EU, which pointed out that the current system for determining the State responsible for examining applications for international protection lodged on EU territory, including the overall set of related processes, is inefficient and unable to respond to an urgent and enormous influx of people applying for asylum in the EU. The specific form of this reform was outlined by the Commission in its Communication to the European Parliament and of the Council "Towards a reform of the common European asylum system and enhancing legal avenues to Europe" 6 April 2016.<sup>1</sup> Relatively soon after (4 May 2016) it presented a first set of concrete legislative proposals, with which it intends to gradually implement the reform CEAS, and, according to its own words, it considered in that first set the reaction of the individual Member States regarding the content of such communication. It includes 1) the revision of the Dublin Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged by a third-country national or a stateless person in one of the Member States (i.e. The Dublin IV) and the associated 2) proposal for a regulation establishing a European Union Agency for asylum and 3) a revision of the Regulation governing the Eurodac system.

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)

The Dublin regulation is to be revised in an attempt to create a simpler and more effective system for determining the Member State responsible for examining an application for international protection lodged on EU territory. In addition, the Commission is using this

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<sup>1</sup> COM(2016) 197 final.

proposal to try to share out responsibilities more evenly between Member States, i.e. by establishing a mechanism to be activated in emergency situations and to allow redistribution of asylum seekers from the most burdened Member States to those not exposed to so much pressure. Finally, the proposal is intended to prevent abuse of asylum procedures and secondary movement within the EU.

#### Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

The aim of this proposal is to enhance the mandate of the European Asylum Support Office (EASO), which should be transformed into a European Union Agency for Asylum), which will pave the way for the implementation of the reformed Common European Asylum System. This step is therefore directly linked to the above-mentioned review of the Dublin Regulation and creates the necessary legal, operational and practical framework for its implementation, so that the Agency could provide Member States with the necessary operational and technical assistance to expand practical cooperation and exchange of information, promote sustainable and equitable distribution of applications for international protection, monitoring the implementation of the CEAS and the capacity of the asylum and reception systems in the Member States and to allow for the gradual approximation of the procedures for assessing applications for international protection within the Union.

The proposal for a Regulation of the European Parliament and of the Council concerning the establishment of Eurodac (recast)

The Eurodac Regulation is a necessary complement to the Dublin regulation (together making up the so-called Dublin System). Its essence is to collect fingerprints of all asylum seekers more than 14 years old. Once the fingerprints are recorded, the system is automatically compared with the fingerprints that were previously entered into the database, making it possible to check whether the person concerned has previously applied for asylum in another Member State. Thanks to this, the competent authorities of the Member States should be able to easily identify applicants and determine the country which should examine their case instead of them. The system thus also prevents asylum seekers from turning to the other Member States when their request was previously rejected by one Member State, possibly by applying for international protection in several Member States simultaneously within the framework of the EU.

Through the proposal to revise the Regulation, the Commission is responding to a problem that has emerged in the context of the currently ongoing migration and asylum crisis, in which some Member States with external EU borders ceased to scan for fingerprints because they were overloaded, thereby enabling a number of illegal residents, whose identity is an unknown, to enter the EU. The Commission has previously tried to solve this issue by issuing guidelines for the implementation of EU standards relating to compulsory fingerprinting, which provides best practices for fingerprinting of newly arrived asylum seekers. However, they did not produce the desired effect. The above Communication from April 2016 therefore initiated a comprehensive overhaul of the Eurodac system to strengthen it and the expansion of its purpose to help to combat illegal migration and encourage illegal migrants' return to their home countries.

– Content and impact:

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)

The draft content is based on the text of the Dublin III<sup>2</sup> Regulation, which introduces a number of changes that bolster the original aim of the Dublin Regulation. The changes ensure rapid access for asylum seekers to the asylum procedure and provide for the examination of applications by a single, clearly designated Member State. The key changes include:

#### 1. Streamlining procedures and improving the efficiency of the Dublin Regulation

a) The basis for international protection applicants' obligation to submit an application in the Member State of their first illegal entry or legal residence

The proposal essentially maintains the original criteria for determining the Member State responsible for examining an application for international protection. However, it introduces a new requirement for applicants for international protection, under which they must submit an application either in a Member State of the first illegal entry or in a Member State in which they reside legally (e.g. on the basis of the Schengen visa). So far, this rule has resulted only in criteria for determining the Member State responsible for examining an application for international protection (in most cases, the Member State of the first entry is the competent State), and has not explicitly stated the requirements that an applicant for international protection must meet if they want to be granted protection in the EU. The provision then clearly states that the applicant has no right to pick and choose in which Member State the application is submitted. The proposal also provides that if the applicant fails to comply with this obligation, the competent Member State shall consider the request under an expedited procedure, which in practice means limited procedural safeguards for such applicants.<sup>3</sup> Another negative consequence will be the reduction of the possibility of applying for material claims to only the Member State which the migrants are required to stay in.

b) Establishing the obligation for Member States to verify the admissibility of the request before determining the Member State responsible for their assessment

Member States will have new requirements before the start of the procedure of determining the Member State responsible for verifying whether the application is inadmissible on the grounds that the applicant comes from the first country of asylum or a safe third country. If they come to the conclusion that this is the case, the applicant shall be automatically returned to such countries, and the Member State which carried out the inadmissibility check shall be considered for the competent country to examine their application. Similarly, Member States shall verify whether the applicant comes from a safe country of origin, or whether they pose a security risk for the EU. In this case, the Member State, in which the application was filed and which shall assess the accelerated procedure (see above) shall be deemed competent.

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<sup>2</sup> 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.

<sup>3</sup> See Article 31(8) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

#### c) Rule of stable determination of competency

The proposal also establishes the rule that once the competency for examining an application for international protection has been determined, that Member State shall remain responsible for examining any other relevant facts and applications concerning the given applicant in the future. Criteria for determining competency are to be used only once, with the stipulation that criteria ranking is determined based on the status at the time when the applicant first lodged their application in the territory of a Member State (this also applies to family members and minors). The submission of another request for international protection in another Member State shall automatically be subject to the rules on readmission.

#### d) The basis of the obligation to cooperate and expansion of the duty to inform applicants for international protection

In relation to applicants for international protection, the proposal provides for an obligation to timely provide all the data and information relevant to the determination of the Member State and the obligation to cooperate with appropriate authorities of the Member State conducting the proceedings. This covers, for example, the obligation to be present and available to those authorities, including the obligation to respect the decision of transfer. In the case of noncompliance, the Member State must consider the information that was submitted unreasonably late. In this context, the proposal automatically relies on the performance of a personal interview with the applicant to easily obtain all information necessary for determining which Member State is responsible for that applicant. However, if the interview may not be conducted (e.g. because the applicant fled), or if the Member State has sufficient information, the interview may be waived if its implementation should delay the proceedings.

The proposal also expands the range of information, which the applicants for international protection are entitled to during the proceedings.

#### e) Expansion of the definition of family members

Based on the latest provisions, siblings of the applicant should also be considered as family members when it comes to determining the appropriate Member State and family relationships emerging in the period after leaving the country of origin and before arrival in the territory of the Member State (e.g. in a refugee camp) should also be considered. This measure is intended to reduce the risk of secondary movement of the persons concerned.

#### f) Shortening procedural deadlines and changes to the consequences of their expiry

The proposal provides for shorter deadlines for a number of procedural steps in order to shorten the overall duration of proceedings. In this context, the provisions relating to the procedure in cases of urgency were repealed (they are no longer necessary).

The proposal also repeals the so-called cessation provisions under which the competency of a Member State determined under the Dublin Criteria was automatically transferred to another Member State after the lapse of certain period of time. These included situations where an applicant was not returned to a Member State responsible for examining their application for international protection within a certain deadline and the Member State where the applicant actually resided became responsible for assessing their application.

#### g) Changes to return procedures

Requests for return have been replaced by a simple notice of return that do not require a response, only a mere acknowledgment of acceptance (it relates to a clear definition of the State responsible for examining an application for international protection and the elimination of transfers of competency – see above). In this context, the rules for examining a request by the appropriate Member State after accepting the affected person back were also amended (basically the position of a person in the process of receiving international protection is deteriorated). An obligation of the appropriate Member State to take back a beneficiary of international protection, who made an application or is illegally resident in another Member State has also been newly established. All the changes referred to above should discourage from further movements within the EU.

#### h) Modifying the rules relating to remedies

Appeal proceedings under the procedure for determining the competent Member State shall be accelerated considerably and more harmonised. Appealing shall then automatically stop relocation. Furthermore, the proposal introduces a new remedy for cases where a decision on relocation has not been adopted and an applicant claims to have a family member/relative (in the case of unaccompanied minors) who is lawfully resident in another Member State.

#### i) Guarantees for unaccompanied minors

The proposal clarifies the rules on competency in the case of unaccompanied minors. The Member State in which they first filed the application shall have the competence to assess their application for international protection, unless it is established that such a procedure would not be in their best interest. This presumption is intended to allow for quick access to asylum procedures for this category of people. Assessing best interests would work better.

#### j) Changes related to the establishment of the European Union Agency for Asylum

The main responsibility within the mechanism of early warning and readiness should be adopted by the newly established European Union Agency for Asylum (AEUA). All provisions relating to this mechanism were removed from the Dublin Regulation and transferred to a special regulation governing the status and tasks of the new agency (see below). In connection with its activity, a so-called Dublin system network of units was created. It should help to improve practical cooperation and the sharing of information related to the application of the Dublin Regulation.

### 2. A fairer sharing of responsibilities – correction allocation mechanism

The fundamental and probably the most controversial new proposal under the recast Dublin Regulation is the introduction of the so-called Correction of Allocation Mechanism (or Remedial Allocation Mechanism), the aim of which should be to ensure more equitable sharing of responsibilities between Member States, and quick access for applicants to the procedures for granting international protection in situations when a Member State is experiencing an excessive amount of applications which they are competent to process in accordance with the relevant rules of the Dublin Regulation.

The basis of this mechanism is the redistribution of excess applicants for international



protection to other, less busy Member States, provided that the conditions for its execution are fulfilled. These Member States should then become competent to process applications instead of the State which activated the mechanism. For this purpose, an automated system should be established that enables the registration of applications for international protection lodged in the EU territory and monitoring the share of handling of each Member State.<sup>4</sup> Each submission should thus be recorded and marked with a unique identification number that will also be added to the data file recorded in Eurodac (see below). Once the competency of a Member State responsible for the assessment has been determined for a correct application, the data will be added into the system so that the number of requests that each Member State must process and the share such number represents relative to other Member States can be monitored. In this context, the proposal also counts on the fact that the system would also record the number of persons admitted under voluntary resettlement programs.

The above mechanism should be activated by fulfilling capacity calculated for a given Member State using the so-called Reference number, which will depend on the size of population of the Member State (50% weighting) and its total GDP (50% weighting) in relation to other Member States. The fixed percentage rate shall be used to determine the share of the total amount of applications filed in the EU over the past year that each Member State shall decide on. Once the actual figures exceed the reference value by 150%, the redistribution mechanism will be activated. The described limit shall account for the number of applications for international protection which a specific Member State shall be competent to decide on within the precise period (including competency to decide on inadmissibility of the application), but also the actual number of persons relocated during the defined period of twelve months.

In the event that the mechanism is activated, the reference number would be automatically recalculated, while the number of applications which the designated Member States must accept from the affected State would be determined. In this situation, the rule should be applied that all over-the-limit applications (including the new ones) shall be allocated to Member States where the number of applications which they are competent to process is lower than the rate set out by the reference number (applications would be allocated fairly according to this number). If they reach the allocated applications limit, allocations to that Member State would end. This process would continue until the number dropped below the level of 150% of its reference value for the Member State for which the mechanism was activated.

The proposal assumes that prior to the acceptance of a particular foreigner, the appropriate Member State will be able to carry out the security clearance within one week. The given Member State will also be required to provide fingerprints of the given person for verification. The whole process should then be defined by the principle of preserving family (family members should be allocated to the same Member State).

The proposed concept provides for the possibility of temporarily not participating in the described redistribution mechanism (for 12 months). In that case, however, the given Member State will have to express its solidarity, at least in the form of a financial contribution amounting to EUR 250 000 for each applicant whose application whose application is refused in this manner. The funds will go to those Member States that assumed the responsibility for

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<sup>4</sup> The European Agency for the Operational Management of Large-Scale IT systems in the Area of Freedom, Security and Justice (eu-LISA) will be responsible for its development and technical operation.

the given applicants instead of them.<sup>5</sup>

The newly established European Union Agency for Asylum (see below), which will regularly report to the Commission, shall oversee the above process. It will annually evaluate its implementation and assess whether it fulfils its purpose or not.

Impact on the state budget and legal order of the Czech Republic:

Given that it is directly applicable legislation, it is not currently deemed necessary to reflect the proposed changes in the system of law of the Czech Republic, although it cannot be completely ruled out. With regard to the impact on the state budget, the financial cost is expected primarily to be connected to the eventual introduction of the above correction mechanism of allocation and the automatic system for registration of applications for international protection lodged in the EU. Each use of the corrective allocation mechanism would then also put increased demand on the state budget. Their specific amount, however, cannot currently be quantified.

Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

The proposal builds on the current mandate of the EASO pursuant to Regulation (EU) No. 439/2010<sup>6</sup> (which also repeals under this proposal), which converts it to a full EU agency equipped with not only the coordination but also the strong executive powers necessary for the implementation of the following objectives:

1. To enhance practical cooperation and information exchange on asylum

The Agency should facilitate, coordinate and strengthen practical cooperation and exchange of information between Member States on various aspects of asylum not only in the EU but also in third countries. To this end, capacities for collecting and analysing this information shall be created in the Agency. Its output should then be able to allow the Member States to better understand the factors influencing the migration of this type entering the Union, or to provide an early warning and readiness.

The referred tasks had already been performed by EASO, which had to rely on voluntary provision of information by Member States. Now, the Member States shall be required to cooperate and have an obligation to share information. In this respect, close collaboration of agencies with other relevant EU agencies, European External Action Service and other relevant international organisations (UNHCR) shall be expected.

Its tasks will include, among others, development and provision of training of members of relevant national authorities, including its own experts, which the Agency shall send out for joint operations in the Member States under disproportionate migratory pressure.

2. To ensure greater convergence in assessing the international protection within the Union

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<sup>5</sup> Practical details for the implementation of the financial solidarity mechanism are established by the Commission in the form of an implementing act.

<sup>6</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

The Agency should play an important coordinating role in terms of ensuring greater convergence and resolving differences in the actual assessment of applications for international protection. To this end, a network for the exchange and update of national reports on countries of origin shall be created, which the Agency will draw from when developing a common analysis containing information about the situation in countries of origin. Member States will then have an obligation to use the information published by the Agency, while informing the Agency on their decisions on international protection for such applicants whose country of origin was subject to their joint analysis. In the event of a practice diverging from the conclusions of the analysis, they will be required to state the reasons which led to their decision.

In this context, the new task shall then involve the provision of support to the Commission regarding the regular review of the situation in third countries included in the common EU list of safe countries of origin. Likewise, the Agency will also be consulted by the Commission when considering whether it should add any other third country to this list or rather removed it from it.

3. To promote EU legal instruments on asylum and to issue implementing rules to streamline their application

The proposal gives the Agency the power to adopt various types of technical documents, such as performance standards, guidelines and best practices regarding the implementation of EU legal instruments in the field of asylum on the basis of its initiative or at the request of the Commission . Member States will then be obliged to observe such rules.

4. To monitor and assess the implementation of CEAS

Another new task of the Agency will involve monitoring and assessing compliance with all aspects of the Common European Asylum System by the Member States, in particular the asylum procedures, the Dublin System, the extent of recognition of applications and quality of granted international protection, but also the compliance with the issued operating standards and guidelines. Furthermore, it will validate the readiness of asylum and reception systems of Member States and their ability to effectively manage these systems (especially if they are exposed to undue pressure). The aim of these activities should be to ensure timely resolution of deficiencies in the functioning of CEAS, on the one hand, and ensuring that Member States are able to adequately respond to emergencies, on the other hand. Monitoring will be carried out by teams of experts composed of employees of the Agency and the Commission, who will be able to visit a Member State and examine the files of asylum seekers and specific decisions on international protection. The result of their work will be a report containing recommendations to correct the shortcomings (if any are detected). The given Member States will then consider these recommendations and submit within one month an action plan for their implementation, which may last no longer than six months. If the Member States fail to respond to the content of the report and the seriousness of the shortcomings identified will be such that it could endanger the overall functioning of CEAS, the Commission will be involved in the whole process and it will be able to formulate their own recommendations and possibly decide on the means of intervention of the agency designated to remedy the situation. Monitoring will be based on an annual plan, or on the own initiative of the Agency or at the request of the Commission so that each Member State could be evaluated at least once every 5 years.

## 5. To provide increased operational and technical assistance to Member States

The proposal significantly expands the role and functions of the agency that provides operational and technical assistance to Member States (modelled after Frontex). In cases of increased pressure on their reception and asylum systems, the Agency will be able to organise and coordinate a comprehensive set of operational and technical measures based on the possibility of participating in national proceedings to grant international protection (e.g. in hotspots), control of third country nationals, registration of applications for international protection, assistance in the implementation of resettlement and relocation services, and information provision, etc. These forms of support will be provided at the request of individual Member States, but also on its own initiative based on the above described mechanism of assessment, or in cases where a Member State is clearly unable to fulfil its obligations arising under CEAS. If the given Member State does not agree with the assistance offered for some reason, the Commission shall be able to impose remedial measures under an implementing decision, including a possible intervention by the Agency and its forms.

Operational and technical assistance should provide support teams purposely consisting of experts from Member States or experts provided to the Agency by Member States and Agency's own experts.<sup>7</sup> These teams will proceed in Member States on the basis of an operational plan agreed between the Agency and the particular country. For emergencies, there will be the so-called Asylum Intervention Pool consisting of at least 500 experts from the Member States established within the Agency, who will be listed in special list and, if necessary, invited to become involved in support operations.<sup>8</sup> The Member State will be required to immediately release its appointed experts under the Agency's request (except in cases of imminent danger to its own asylum system).<sup>9</sup> Member States will be obliged to allow experts to consult European and national databases in order to effectively carry out tasks of support teams and the pool. Regulation then also counts on the function of Agency's coordinators<sup>10</sup>, who will promote cooperation and coordination between the host Member State, on the one hand and the participating Member States and the Agency, on the other.

The Agency will now also be able to acquire or lease its own equipment (beyond the equipment to carry out its tasks, provided by Member States). In connection with the significant expansion of the Agency's mandate and increased personnel and technical demands, it will also significantly increase its budget.<sup>11</sup>

## 6. Cooperation with third countries

With regard to the cooperation with third countries, the Agency should not only coordinate the exchange of information but also the operational cooperation between Member States and third countries. Officials from third countries will then be able to act as observers of operational activities undertaken by the Agency. The Agency will also continue to coordinate the exchange of information and other measures taken by Member States regarding resettlement and participate in the implementation of international agreements between the Union and third countries.

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<sup>7</sup> The number and profiles of these experts will be decided by the Board upon a proposal of the Executive Director. The posting period will be determined by the Member States themselves.

<sup>8</sup> Each Member State shall contribute with a certain percentage.

<sup>9</sup> Within seven working days and in case of an emergency even within three working days and without exception.

<sup>10</sup> Formerly referred to as the Union contact point.

<sup>11</sup> Up to six times.

Impact on the state budget and legal order of the Czech Republic:

Given that the proposal significantly increases the Agency's position in relation to the Member States, it can be assumed that a particular provision will have to be reflected also in national legislation for the purpose of its clarification (see, for example, the specification of its role in the procedure for granting international protection in Member States). In this context it is also important to account for certain demands on the state budget, which may arise from its actual activity (see, for example, the need to increase national capacity in the event of an unfavourable evaluation and the obligation to implement corrective measures).

The proposal for a Regulation of the European Parliament and of the Council concerning the establishment of Eurodac (recast)

The main objective of this reform is to expand the scope of the regulation so that the Eurodac system could also collect fingerprints of third country nationals or stateless persons who have not requested international protection (i.e. were not fingerprinted in this context) and having been found to illegally reside in the EU territory. The Member States could thus regain control over these persons and expedite their return back to their country of origin. In this connection, the proposal also introduces the extension of the list of personal data that can be centrally stored for such purpose. In addition to the fingerprints, the latest system will record the new image of the face, the name, date of birth, nationality and details of the identity document or the passport. In the past, the competent authorities of the Member States had to specifically request such data in the Member State where fingerprints were taken. Now, they would be directly available to expedite the process of identifying such persons and activities associated with their return. The referred data should be stored in the system for 10 years, so that Member States could also monitor possible secondary movements of people who were granted international protection in one Member State. Fingerprints of persons, who did not request international protection in the EU, shall form an exception when their fingerprints are stored for 5 years. Earlier deletion of such data will be possible only in persons obtaining citizenship in a Member State. Another change would involve the reduction of the age limit for fingerprinting and facial scan under this regulation from 14 to 6 years of age. The purpose of this measure is to strengthen the protection of unaccompanied minors. Information recorded in the database will, under certain circumstance, also be possible to share with third countries to facilitate the readmission of persons concerned. The possibility of introducing sanctions for non-compliance with the fingerprinting procedures by Member States is a new concept, while the proposal leaves Member States the freedom of choice regarding the form of sanctions. The limit is represented by the need to respect the fundamental rights of the persons concerned so that detention or any other form of coercion shall apply only as the last resort. Furthermore, the proposal allows the interconnection of Eurodac with other EU databases such as the Schengen Information System (SIS), the Visa Information System (VIS) and the Entry / Exit System (EES), which creation was initiated by the Commission in April this year.

Impact on the state budget and legal order of the Czech Republic:

Given that it is directly applicable legislation, it is not currently deemed necessary to reflect the proposed changes in the system of law of the Czech Republic. If the Czech Republic decided to introduce the above sanctions for non-respecting the procedures set out for fingerprinting into its national legislation, it would be required to proceed to amend the

relevant legal regulations. As regards the impact on the state budget, in relation to the extension of the list of centrally registered data, increased financial demands that would require particular technical modifications to existing systems used by the country, could be anticipated. Owing to the expansion of the category of persons for whom the above referred data collection shall be compulsory, the need to expand human capacity and technical equipment of the appropriate offices may also be expected.

– Opinion of the Government of the Czech Republic:

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)

The Czech Government generally welcomes the changes, which will simplify procedures and increase the efficiency of the Dublin System. However, it categorically rejects the introduction of the mandatory allocation mechanism for exceptional cases and will strive for its full exclusion from this proposal. Given its long-term opinion, it would support this idea only under the assumption that the redistribution mechanism would be based on the principle of voluntariness, as is the case for the institute of temporary protection.<sup>12</sup>

In this respect it also completely rejects the of compulsory solidarity contribution, which directly linked to the given allocation mechanism. The Czech Government would wish to balance its opposition to the initiative with a constructive discussion on such parts of the proposal, which could contribute to a better functioning of the Dublin rules and those, which it deems beneficial.

Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

The Czech Government supports the expansion of the mandate of EASO, which should, however, only apply to areas of practical voluntary cooperation and voluntary convergence of asylum systems through sharing of good practices between Member States and by creating recommending proposals to harmonise CEAS. However, it supports the strengthening of the role of the authority in relation to such Member States that are under significant migration pressure (modelled after Frontex). With some their reservations it then approaches the Agency's ability to intervene in a particular Member State out of its own initiative, where it believes that national competence in the field of international protection should be maintained. Likewise, it will not support the proposed obligation for Member States to follow the joint analysis of the Agency on countries of origin or any standardised procedures. It believes that strengthening the role of authority in the area of monitoring and evaluation of reception and asylum systems should be targeted primarily to Member States demonstrating long-term shortcomings in this area and not seen as blanket and continuous monitoring of all Member States. In regards to the mandatory collection and sharing of information with the Agency, the Czech government highlights the need to set the balance between the administrative burden for appropriate national authorities and the added value of such

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<sup>12</sup> See Article 25 of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

information. At the same time, it believes that this system should not overlap with other mechanisms for data collection and evaluation in this area at EU level.

The proposal for a Regulation of the European Parliament and of the Council concerning the establishment of Eurodac (recast)

The Czech Government welcomes the proposal and supports it. In its opinion, the proposed changes reflect requirements, which it advocated in the past and therefore it does not intend to apply any fundamental objections to the proposed regulation. It intends, primarily, to promote the expansion of the purpose of the Eurodac system and to exchange information on persons illegally residing in the EU. Similarly, it welcomes the opportunity to share the data contained therein with third countries to facilitate the return of illegal migrants and believes that cooperation with third countries in this area could reach even further, i.e., for instance the cooperation in the form of data sharing to identify or monitor migration flows. It is the opinion of the Czech Government that it could also agree with the reduction of the minimum age for biometric data capture, provided that it will be clarified how this process will be technically adjusted to allow for comparison. Beyond that, it then intends to insist on strict consistency of the proposal with the aforementioned revision of the Dublin Regulation; it is its opinion that both proposals currently present a number of inconsistencies and application shortcomings.

– Timetable for consideration of the proposal by the European institutions:

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)

Discussions in the European Parliament are currently in the stage of comitology. The proposal was allocated for debate to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The opinion was then also requested from the Committee on Budgets (BUDG), Committee on Foreign Affairs (AFET) and the Committee on Legal Affairs (JURI). The initial debate on the proposal in plenary stage had already taken place in early May, immediately following its introduction by the Commission, which expressed general support for the overall revision of the Dublin System, including the introduction of a mechanism for allocation for emergencies. Equally, the hearing of the proposal in the Council is only in its early stages. Some Member States, however, have already openly expressed support of this initiative (Belgium, Bulgaria, Cyprus, Germany, Austria). In addition to the Czech Republic, negative opinions were also voiced by Hungary, Poland, Slovakia, Lithuania, Latvia, Estonia, Denmark and Great Britain, which do not agree with the introduction of the corrective allocation mechanism. A more detailed timetable for discussing this initiative is not yet known. However, very complicated and time-consuming negotiations may be expected.

Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

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hearing of the proposal in the EU Council is only in its early stages, while a more detailed timetable for negotiations is not currently known.

The proposal for a Regulation of the European Parliament and of the Council concerning the establishment of Eurodac (recast)

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– Conclusions:

The European Affairs Committee

1. fully agrees with the framework position of the Czech Government on the document COM(2016) 270 final of 1 June 2016;

2. is in favour of those initiatives contained therein, leading to the overall streamlining of the Dublin System in accordance with its established position so that it could react promptly in the event of an increased influx of asylum seekers, and of the initiatives that will help prevent secondary movements and purposeful abuse of asylum systems of the Member States;

3. strongly rejects, however, the Commission's proposal to introduce the so-called corrective allocation mechanism and the associated financial solidarity contribution, which it considers to be inconsistent with the principle of subsidiarity under the provisions of Article 5(3) of the Treaty on European Union;

4. adopts, therefore, the justified opinion regarding the proposed regulation pursuant to Article 6 of Protocol No 2 on subsidiarity and proportionality annexed to the Treaties on the following grounds:

a) As was the case in its first attempt to establish a permanent crisis relocation mechanism by changing the Dublin Regulation of September last year (COM(2015) 450 final), the Commission has once again failed to explain in a sufficiently convincing manner the need to establish such a mechanism at EU level, limiting itself to a mere statement that responsibilities between Member States can only be shared out fairly by adopting measures at EU level. In accordance with the provisions of Article 5 of Protocol No 2 on subsidiarity and proportionality annexed to the Treaties, every draft legislative act shall contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. However, the Commission failed to convince the committee on the need to adopt the proposed measure by way of the above referred explanation, particularly given that the mechanism is re-conceived as permanent and compulsory, despite the fact that both previously adopted temporary EU mechanisms for the redistribution of asylum seekers do not work.

b) The solution to emergency situations in individual Member States following a sudden inflow of third country nationals also relies on Article 78(3) TFEU, which permits the one-off



adoption of temporary measures with regard to the affected countries; In each case, the approval of the Council, which decides by a qualified majority after consulting the European Parliament, is required in order for them to be adopted. The legal basis chosen by the Commission, however, in no way presupposes the resolution of the crisis situations; on the contrary, it is intended to manage standard migration flows, while permitting the adoption of certain emergency measures that represent an exception to the rules adopted on that basis in crisis situations. Implementation of the crisis allocation mechanism in the framework of Dublin rules thus completely denies the purpose of Article 78(3) TFEU.

c) The introduction of the proposed corrective allocation mechanism can, moreover, be seen as superfluous given that the EU already has a tool to deal with similar situations in the form of the institute of temporary protection laid down in Council Directive 2001/55/EC, which can be used in the event of a mass influx of displaced persons and which seems to be, according to the opinion of this committee, a much more appropriate solution for this situation.

d) The proposed mechanism also shows a number of practical shortcomings (lack of will of applicants for international protection to be subjected to this mechanism and the associated probability of subsequent secondary movements, unclear system of redistribution, disregard for actual capacities of Member States, etc.), which is supported by the current implementation of the two temporary relocation mechanisms referred to above, which did not have the desired effect or results. However, the Commission did not learn from this, and, despite this, it has presented the concept, although it had practically been demonstrated that the Union is not able to achieve its goals better than the Member States themselves; the actual benefits of this initiative may be in doubt.

e) In the light of the above, the committee therefore must continue to insist on its previous opinion that the decision on which people will be long-term or permanent residents in its territory should be the prerogative of each Member State that actually aligns its migration, asylum and integration policy with that fact, but also with access to internal security and public order;

5. with reference to the above, it requests the Czech Government to strive to exclude the corrective allocation mechanism from the text of the proposal and, in extreme cases, block its overall acceptance when discussing reform of the Dublin Regulation at EU level;

6. approves the framework position of the Czech Government on the document COM(2016) 271 final of 23 May 2016;

7th welcomes the initiative of the Commission to strengthen the mandate of the European Support Office on Asylum, the potential of which should be used primarily to support and assist Member States that are under undue pressure from asylum seekers;

8. but disagrees with the strengthening of powers of the Agency to the extent that it could, of its own initiative or on the basis of implementing a decision of the Commission, interfere with the national competencies of Member States when deciding on the provision of international protection;

9. in this context it stressed that the responsibility for deciding on asylum issues would continue to be borne exclusively by Member States, which alone determine the conditions for

international protection in its territory in accordance with obligations arising for them from international and European law;

10. rejects the proposed strengthening of competencies of the Agency and, by extension, the Commission regarding the blanket periodic reviews of the asylum systems of Member States and the related imposition of remedies and their subsequent enforcement;

11. welcomes the proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EC) 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) (COM(2016) 272 final);

12. considers this proposal an effective step in the fight against illegal migration into the EU and a useful tool for facilitating the return and readmission of persons illegally residing in its territory;

13. considers the framework position of the Czech government on the document COM (2016) 272 final of 24 May 2016;

14. requests the Czech Government to report on the progress and results of the examination of this legislative package in the EU institutions as the European Affairs Committee and the Subcommittee for Migration and Asylum Policy;

15. authorises the Chair of the Committee on European Affairs, in accordance with the Rules of Procedure of the Chamber of Deputies of the Czech Republic, to forward this resolution, through the Speaker of the Chamber of Deputies, to the Government of the Czech Republic, the Speaker of the Senate, the President of the European Parliament, the President of the Council and the President of the European Commission.

Dana Váhalová, by own hand  
certifier

Ondřej Benešík, by own hand  
Chair and Rapporteur