17.11.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY


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 Italian Senate 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.
RESOLUTION OF THE 1st STANDING COMMITTEE
(Constitutional affairs, affairs of the Prime Minister’s Office, internal affairs, general state
and government system)

(Rapporteur: Mazzoni)
adopted at the sitting of 19 October 2016

on the

standards for the reception of applicants for international protection (recast)
COM(2016) 465 final)
pursuant to Senate Rule 144(1) and (6)

Forwarded to the Presidency on 25 October 2016
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The Standing Committee,

having considered the proposal for a directive, pursuant to Senate Rule 144(1) and (6), whereas:

the proposal for a directive, which is part of a comprehensive reform of the European asylum system, provides for the recast of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 (‘Reception Conditions Directive’) in order to further harmonise reception conditions in the European Union, with a view to increasing applicants’ integration prospects and decreasing secondary movements;

the proposal for a directive includes the following new elements in comparison with the current Reception Conditions Directive:

in Article 2, an extension of the definition of material reception conditions;

in Article 7, a new list of cases in which applicants for asylum may be obliged to reside in a specific place, given the risk that they might attempt to abscond. Moreover, for the same reason, and where applicants fail to comply with procedures, Article 19 stipulates that daily allowances may be withdrawn or reduced, with the exception of allowances for essential items, which may be replaced with goods in kind;

in Article 8, a further reason for detaining applicants is provided, where there is a risk of absconding;

Article 15, reduces the time-limit for access to the labour market from no later than nine months to no later than six months from the date of the application for international protection. Moreover, the option for Member States to give priority to EU citizens has been deleted and replaced with the mere option of verifying whether a vacancy could be filled by an EU national. A paragraph has also been added to ensure that applicants for asylum have the same working conditions as those of nationals;

whereas:

the legal basis has been correctly identified as Article 78(2)(f) of Treaty on the Functioning of the European Union (TFEU), which provides for the use of the ordinary legislative procedure for the adoption of measures for a common European asylum system comprising rules concerning reception conditions for applicants for asylum or subsidiary protection. Furthermore, this is the same legal basis as that of Directive 2013/33/EU, which is being recast;

the proposal requires Member States to take into account operational standards and indicators concerning reception conditions developed by the European Asylum Support Office (or the future European Union Agency for Asylum) when monitoring and controlling their reception systems (Article 27);

the proposal obliges Member States to draw up, and regularly update, contingency plans setting out the measures to be taken to ensure adequate reception of applicants in cases where the Member State is confronted with a disproportionate number of applicants for international protection (Article 28). The proposal also requires the Member States to inform the Commission and the European Union Agency for Asylum whenever their contingency plan is activated;

in keeping with all the previous directives, the proposal tends to reduce incentives for secondary movements within the EU relating to reception conditions. To that end, to ensure
an orderly management of migration flows, facilitate the determination of the Member State responsible and prevent secondary movements, the Commission stresses the need for applicants to remain in the Member State which is responsible for them and not to abscond. It also points out that the introduction of more targeted restrictions to applicants' freedom of movement and strict consequences when such restrictions are not complied with will contribute to more effective monitoring of the applicants' whereabouts;

the proposal does not change the fact that applicants may, as a general rule, move freely within the territory of the host Member State or within an area assigned to them by that Member State (Article 7(1)). However, for reasons of public interest or public order, for the swift processing and effective monitoring of applications for international protection, for the swift processing and effective monitoring of the procedure for determining the Member State responsible in accordance with the Dublin Regulation, or in order to effectively prevent the applicant from absconding, the proposal requires Member States, where necessary, to assign applicants a residence in a specific place, such as an accommodation centre, a private house, flat, hotel or other premises suitable for housing applicants. Such a decision might be necessary in particular in cases where the applicant has not complied with his or her obligations, as follows: a) the applicant has not complied with the obligation to make an application for international protection in the first Member State of irregular entry or legal entry (as set out in Article 4(1) of the proposed Dublin Regulation) and has travelled to another Member State without adequate justification and made an application there; b) the applicant has absconded from the Member State in which he or she is required to be present; c) the applicant has been sent back to the Member State where he or she is required to be present after having absconded to another Member State;

a further reason for detaining applicants has thus been added: in case an applicant has been assigned a specific place of residence but has not complied with this obligation, and where there is a continued risk that the applicant may abscond, the applicant may be detained in order to ensure the fulfilment of the obligation to reside in a specific place (Article 8(3)(c));

in addition, the proposal reduces the time-limit for access to the labour market from no later than nine months to no later than six months from the date when the application for international protection was lodged, where an administrative decision on the application has not been taken in accordance with the proposed Asylum Procedures Regulation and the delay cannot be attributed to the applicant (Article 15(1)(1));

pursuant to Article 6(4) of law No 234 of 24 December 2012, on 11 October 2016 the European Affairs Department of the Italian Prime Minister’s Office sent to both chambers of the Italian Parliament the report drawn up by the Interior Ministry on the proposal for a regulation under consideration; it did not note any major issues regarding compliance with the principle of conferral and the legal basis, and took the view that the subsidiarity principle had been respected;

with regard to the principle of proportionality, however, the report states that this is not complied with in the part of the proposal which reduces the material reception conditions for minors;

the report gives a generally positive assessment of the proposal and its prospects at the negotiating table (except for the aforementioned situation concerning minors), 'since it contributes to the convergence of national systems, in particular with regard to the harmonisation of reception conditions in the Member States’ and considers the proposal, overall, to be in the national interest;
given that:

while the principle of proportionality appears to have been formally complied with, as the measures proposed confine themselves to what is necessary in order to achieve the objective, in compliance with Article 5 of the Treaty on European Union, the principle of subsidiarity, however, has not been substantively complied with, as the aim of increasing the harmonisation of reception conditions in the EU, to improve applicants’ integration prospects, cannot be achieved by further clamping down on secondary movements. While it is true that this objective cannot be achieved sufficiently by Member States individually, the combined provisions of directives, regulations and recasts that have built up over time shows that the Commission is totally powerless to ensure that the core principles of the management of migratory flows are complied with – namely, sympathetic reception, the redistribution of asylum applicants and returns.

The Standing Committee therefore opposes the proposal and wishes to make the following comments:

Article 17a introduces a new principle, whereby an applicant who is in a Member State other than the one in which he/she is required to be present is not entitled to certain reception conditions, in particular schooling and education of minors (Article 14), access to employment (Article 15), material reception conditions (Article 16) and the modalities for those conditions (Article 17), even though Member States must nevertheless ensure a dignified standard of living (Article 17a) and access for minors to suitable educational activities. The Standing Committee takes the view that this rule, which seeks to penalise asylum seekers, in some ways penalises children, too, in that it excludes them from access to schooling and education and is thus in stark contrast to the principle that is repeated several times throughout the directive and, in any case, is an established principle within the EU, both internationally and nationally – that of the best interests of the child (this exclusion, indeed, causes incomprehensible harm to the child). It is therefore proposed that minors be excluded from the restriction of access to the services referred to in Article 14 and also from the other restrictions which, even though they may be intended for the parent, will inevitably have repercussions on the child, particularly with regard to those set out in Articles 16 and 17 (material reception conditions and modalities for those conditions);

as regards the replacement, reduction or withdrawal of reception conditions (Article 19), even if any of the measures in question are adopted, a dignified standard of living should nonetheless be ensured. The Standing Committee, however, considers it necessary for it to be explicitly specified what is meant by ‘a dignified standard of living’ (Article 19(4)) and whether, in particular, the Member State has to provide not only healthcare but also accommodation, food and other services (the vagueness of the concept, the implementation of which depends on individual Member States, could lead to an increase in national and EU litigation in addition to calling into question the basic principle of the EU-wide harmonisation of reception conditions);

given that applicants, in any case, must be ensured a dignified standard of living, the rule should be accompanied by further measures (‘which might concern detention, as a method of assessing the dangerousness of the applicant, or even simply the procedure for examining applications, albeit without reducing the relevant safeguards’), to be determined at the negotiating table;

the promotion of legal and safe avenues to the EU remains totally insufficient and the text highlights so-called secondary movements, i.e. movements of migrants from the country
of arrival to other EU countries. The country responsible for examining applications remains such not only during the procedure, but also afterwards, with no expiry date. This removes any European dimension from the outcome of the asylum procedure and takes no account of the requirements and aspirations of refugees, as regards their path towards integration, which would certainly be facilitated by allowing them to go and join relatives who have already settled in countries other than that of first entry;

the overall picture, in clear contradiction to the very rationale of the proposal, is one of a total weakening of the right to asylum in Europe. The trend, conversely, is towards making international protection in Europe more insecure and making the obligations incumbent on countries of first entry even more burdensome;

the reduction of the time-limit for access to the labour market from no later than nine months to no later than six months from the date when the application for international protection was lodged (Article 15(1)(1)) is a step forward as regards the integration of asylum applicants but at odds with the current reality of the employment market in many EU countries;

lastly, the Standing Committee would point out that even if, over the past few months, it had been proclaimed that the Dublin system would be superseded, by extending the number of countries responsible for assessing asylum applications, the regulatory acts recently adopted within the EU, on the contrary, all tend to discourage secondary movements of migrants. Accordingly, though the objective of ensuring equal reception standards in all Member States is a welcome one, it would be advisable to avoid further repercussions on those Member States which, for geographical reasons, continue to receive the greatest number of migrants.
OPINION OF THE 14TH STANDING COMMITTEE  
(EUROPEAN UNION POLICIES)  

(Rapporteur: ROMANO)  

5 October 2016  

The Standing Committee, having considered the act,  

whereas the proposal for a directive, which is part of a comprehensive reform of the European asylum system, provides for the recast of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 (‘Reception Conditions Directive’) in order to further harmonise reception conditions in the European Union, with a view to increasing applicants’ integration prospects and decreasing secondary movements;  

whereas the proposal for a directive includes the following new elements in comparison with the current Reception Conditions Directive:  

in Article 2, an extension of the definition of material reception conditions;  

in Article 7, a new list of cases in which applicants for asylum may be obliged to reside in a specific place, given the risk that they might attempt to abscond. For the same reason, and where applicants fail to comply with procedures, Article 19 stipulates that daily allowances may be withdrawn or reduced, with the exception of allowances for essential items, which may be replaced with goods in kind;  

in Article 8, a further reason for detaining applicants is provided, where there is a risk of absconding;  

Article 15 reduces the time-limit for access to the labour market from no later than nine months to no later than six months from the date of the application for international protection. Moreover, the option for Member States to give priority to EU citizens has been deleted and replaced with the mere option of verifying whether a vacancy could be filled by an EU national. A paragraph has also been added to ensure that applicants for asylum have the same working conditions as those of nationals;  

makes the following favourable comments regarding the proposal for a regulation, specifically as regards matters falling within its area of responsibility:  

the legal basis has been correctly identified as Article 78(2)(f) of Treaty on the Functioning of the European Union (TFEU), which provides for the use of the ordinary legislative procedure for the adoption of measures for a common European asylum system comprising rules concerning reception conditions for applicants for asylum or subsidiary protection. Furthermore, this is the same legal basis as that of Directive 2013/33/EU, which is being recast;  

the subsidiarity principle has been respected, since the aim of increasing the harmonisation of reception conditions in the EU, to improve applicants’ integration prospects and reduce secondary movements, cannot be achieved sufficiently by Member States individually;
the proportionality principle has been respected, since the measures proposed confine themselves to what is necessary in order to achieve the objective.