



Courtesy translation

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

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

**203.
R e s o l u t i o n**

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

Delivered on 30 September 2015

Regarding the proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (COM (2015) 450)

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

With regard to the Treaty on European Union, particularly Article 5,

With regard to the Treaty on the Functioning of the European Union, particularly Article 78 (2) e),

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

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

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

- **Strong emphasis on the implementation of a more effective return policy** by identifying migration issues in negotiations with third countries as a priority, by presenting a draft regulation that will complement the Schengen Information System by adding the Member States' obligation to enter into the SIS a record of the return decision as well as a proposal for a common European list of safe countries of origin,
- **Efforts to address the root causes of migration** through deployment of European migration liaison officers to EU delegations in key third countries, organizing two high-level conferences with the Western Balkans (conference on Western Balkans migration route) and African partners (summit in Valletta), as well as by proposing to create an emergency trust fund for stability and addressing the root causes of irregular migration in Africa;

B. Takes note

Of the proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person;

C. Approves the reasoned opinion as follows:

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

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

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

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

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

D. Authorises

The Committee Chairman

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

Viera Mazurova
Verifier

Ľuboš Blaha
Chairman