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

2016/0133(COD) - 04/05/2016 - Legislative proposal

PURPOSE: to amend 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 (Dublin III reform).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: as set out in its 6 April Communication "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe", the migratory and refugee crisis exposed **significant structural weaknesses and shortcomings** in the design and implementation of the European asylum system, and of the Dublin rules in particular. The current Dublin system was not designed to ensure a sustainable sharing of responsibility for applicants across the Union. This has led to situations where a limited number of individual Member States had to deal with the vast majority of asylum seekers arriving in the Union, putting the capacities of their asylum systems under strain and leading to some disregard of EU rules. In addition, the effectiveness of the Dublin system is undermined by a set of complex and disputable rules on the determination of responsibility as well as lengthy procedures. In particular, this is the case for the current rules which provide for a shift of responsibility between Member States after a given time.

It is clear that the Dublin system must be reformed, both to simplify it and enhance its effectiveness in practice, and to be equal to the task of dealing with situations when Member States' asylum systems are faced with disproportionate pressure.

This proposal on the reform of the Dublin III Regulation is part of a **first set of legislative proposals** the Commission is presenting in the context of a major reform of the Common European Asylum System. These proposals include:

- **this draft Regulation** 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;
- a draft Regulation which aims to extend the scope of the Eurodac Regulation to include the possibility for Member States to store and search data belonging to third-country nationals or stateless persons who are not applicants for international protection and found irregularly staying in the EU;
- a draft Regulation on the European Union Agency for Asylum which aims to strengthen the mandate of the European Asylum Support Office (EASO).

A **second stage of legislative proposals** reforming the Asylum Procedures and Qualification Directives, as well as the Reception Conditions Directive is due to follow to ensure the full reform of all parts of the EU asylum system.

CONTENT: this proposal is a recast of Regulation (EU) No 604/2013 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 ("the Dublin III Regulation").

A summary of the main provisions is as follows:

New fairness mechanism: a new automated system will allow for the registration of all asylum applications made in the EU and the monitoring on a daily basis of the number of applications made in each Member State. The automated system will record every asylum application made in the EU as well as the number of persons in need of protection each Member State effectively resettles from outside the EU.

The new system will automatically establish when a country is handling a **disproportionate number of asylum applications**. If the number of asylum applications made in a Member States is above 150% of the reference share, **the fairness mechanism is automatically triggered**. This reference number is identified on the basis of a key, taking account of the country's population size, and the size of its economy. Once the fairness mechanism is triggered, all new applications in the Member State concerned are allocated to other Member States, after an admissibility check has been carried out, until the number of applications is back below the 150% level.

The fairness mechanism will also factor in the effort being made by a Member State to resettle those in need of international protection direct from a third country.

Criteria for the reference key: the reference key is based on two criteria with equal 50% weighting:

- the size of the population, and
- the total GDP of a Member State.

The number of applications for which a given Member State is responsible and the numbers of persons effectively resettled by a Member State form the basis for the calculation using the reference key and threshold.

NB: a Member State will also have the option to **temporarily not take part** in the allocation. In that case, it would have to make a financial solidarity contribution of EUR 250 000 to the Member State receiving an applicant for whom it would otherwise have been responsible under the fairness mechanism.

Streamlined procedures: procedures will be streamlined, in particular through shorter time limits for the different steps of the determination procedure, transfers and access to the asylum procedure:

- take charge requests, asking another Member State to take over responsibility for an application, have to be sent within one month and a decision taken by the receiving country within one month of receipt of the request. No reply will be tantamount to accepting the request;
- requests from one Member State to another to **take back an applicant** for whom the latter is responsible and who has absconded ('take back requests') will be transformed into simple take back notifications. Such notifications have to be submitted within two weeks of registration and do not require a reply, only a confirmation of receipt. All Member States will be under a clear obligation to take back applicants they are responsible for;
- appeals against transfer decisions will be dealt with within 15 days;

- proper registration of all asylum applications in the EU should help detect multiple applications and **prevent irregular secondary movements**.

Obligations for applicants: the new system introduces clear legal obligations for applicants:

- explicit obligation for applicants to apply for asylum in the Member State of first irregular entry or in the Member State where a person has stayed legally prior to the application for asylum. This will make clear that **applicants do not have the right to choose in which Member State they submit their application**. In case an asylum applicant does not comply with this new obligation, Member States must examine the application in an accelerated procedure;
- applicants will also be obliged to provide all relevant information for determining the Member State responsible for their claim in a timely manner and failure to comply will have proportionate procedural consequences, such as the preclusion of information submitted unjustifiably late;
- to discourage secondary movements, applicants will only be entitled to material reception rights in the country where he or she is required to be present, with the exception of emergency healthcare;
- an obligation for the Member State of application to **check whether the applicant comes from a first country of asylum or a safe third country**. The Member State making this admissibility check will be considered responsible for these applications. The Member State of application must also check whether the applicant comes from a safe country of origin or presents a security risk, in which case they have to examine the application through an accelerated procedure.

Best interests of children and unaccompanied minors: under the new system, the rights of unaccompanied minors will be enhanced and the assessment of the best interests of the child reinforced. The proposal clarifies that the Member State where the minor first lodged his or her application for international protection will be responsible, unless it is demonstrated that this is not in the best interests of the minor. Appeals will be accelerated but will have automatic suspensive effects, meaning no transfers will be carried out while the appeal is ongoing. The rights of unaccompanied minors have been strengthened through better defining the principle of the best interests of the child and by setting out a mechanism for making a best interests of the child-determination in all circumstances implying the transfer of a minor.

New safeguards for asylum seekers:

- **reinforced family reunification**: the right to family reunification of asylum seekers present on the EU territory will be reinforced and the scope will be extended to also include siblings of an applicant as well as families formed in transit, after leaving the country of origin but before arrival on the territory of the Member State;
- **detention**: under the new system, the detention period for the purpose of transfers has been significantly reduced, from six to four weeks.

Review clause: the Commission will review the functioning of the fairness mechanism 18 months after entry into force of the Regulation and annually from then on in order to assess whether the objective of ensuring a proportionate sharing of responsibility between Member States and of relieving disproportionate pressure on certain Member States is met. This review will in particular verify that the threshold for triggering the mechanism is effective.

Territorial provisions: the United Kingdom and Ireland may participate in this proposal, but are not required to do so, in accordance with the relevant Protocols attached to the Treaties. As regards Denmark, it has an opt out and does not participate in justice and home affairs measures. However, Denmark applies the current Regulation on the basis of an international agreement concluded in 2006. Under that agreement, Denmark may opt in to the recast Regulation.

BUDGETARY IMPLICATIONS: the total financial resources necessary to support the implementation of this proposal amount to **EUR 1828.6 million** foreseen for the period 2017-2020. This would cover the transfer costs once the corrective allocation mechanism has been triggered for the benefit of a Member State, the establishment and operation of the IT system for the registration and automatic allocation of asylum applicants.