RESOLUTION APPROVED BY THE COMMITTEE

ON COMMUNITY ACT No. COM (2016) 465 Final

SUBJECT TO A REASONED OPINION ON SUBSIDIARITY

(*Doc.* XVIII, no. 165)

The Committee,

pursuant to section 144(1) and (6) of the Regulations, having examined the proposed directive in hand,

and given that

- The proposed directive, which is part of a root-and-branch reform of the European asylum system, envisages recasting Directive 2013/33/EU (the “reception directive”) to enable greater harmonization of reception conditions in the EU, in order to increase integration prospects for asylum seekers and reduce secondary movements;

- The proposed directive envisages the following new elements with respect to the applicable reception directive:

a) In Article 2, an extension of the definition of material reception conditions;

b) In Article 7, a new list of cases in which asylum seekers may be obliged to reside in a specific location should a flight risk exist. Indeed, in the same circumstances and in cases where there has been a lack of collaboration with the procedures, Article 19 envisages that daily benefits may be withdrawn or reduced, with the exception of benefits for basic necessities, which may be replaced by assets in kind;

c) In Article 8, an additional reason for the detention of applicants in the case of flight risk;

d) In Article 15, a reduction in the length of time required to access the labour market from a maximum of nine months to a maximum of six months from the date the international protection application is made. Furthermore, States relinquish the option

of envisaging forms of precedence that favour European citizens; these are replaced with the mere possibility of checking whether a vacant post may be filled by European citizens. A further section is added oriented towards ensuring that asylum seekers enjoy working conditions equal to those reserved for domestic citizens,

given that:

- The legal basis is correctly identified in Article 78(2)(f) of the Treaty of the Functioning of the European Union (TFUE), which envisages an ordinary legislative procedure for adopting measures associated with a common European asylum system, including regulations on reception conditions for asylum seekers or subsidiary protection. Indeed, this is the same legal basis as for Directive 2013/33/EU, the directive being recast;

- When monitoring and checking their reception systems, the proposal requires member states to take into account operational regulations and indicators regarding reception conditions drafted by the European Asylum Support Office (or by the future European Union Agency for Asylum) (Article 27);

- The proposal requires member states to prepare and regularly update emergency action plans for adoption in order to guarantee adequate reception of asylum seekers at times when member states must cope with a disproportionate number of applicants for international protection (Article 28). Furthermore, the proposal envisages that member states inform the Commission and the European Union Agency for Asylum each time their emergency plan is activated;

- In line with all preceding directives, the proposal tends to reduce incentives for secondary movements within the EU prompted by reception conditions. To achieve this, in order to guarantee an ordered management of migratory flows, facilitate determination of the member state with jurisdiction and avoid secondary movements, the Commission highlights the need for asylum seekers to remain in the member state with jurisdiction for their application, and not to abscond. It goes on to reiterate that the introduction of more targeted restrictions on the freedom of applicants' movement and severe consequences for a failure to comply with these restrictions will contribute to more effective oversight of locations where asylum seekers are staying;

- The proposal does not alter the fact that, as a matter of principle, asylum seekers may circulate freely in the territory of the host member state, or within a zone assigned to them by that member state (Article 7(1)). Nevertheless, for reasons of public interest or public order, for the purpose of rapidly processing and effectively controlling demand for international protection, rapidly processing and effectively controlling the procedure designed to determine the member state with jurisdiction pursuant to the Dublin Regulation, or in order to "effectively prevent" the applicant from absconding, the proposal envisages that if necessary member states may require applicants to stay at a specific place of residence (such as a reception centre, house, apartment, hotel or other facility suitable for the reception of asylum seekers). This decision may be necessary in particular in cases where an asylum seeker has failed to comply with their obligations in one of the following ways: *a*) The asylum seeker has failed to comply with the obligation to submit an application for international protection in the member state of initial irregular entry or legal entry (pursuant to Article 4(1) of the Dublin Regulation proposal) and has travelled without adequate justification to another member state in which he/she has submitted a demand for asylum; *b*) The applicant has fled from the member state in which they are required to stay; *c*) The applicant has been sent back to the member state in which he/she is required to stay after fleeing to another member state;

- An additional reason for detention is subsequently added: should an asylum seeker have been required to stay in a given place but failed to comply with that obligation and there is an ongoing risk that the applicant will abscond, the asylum seeker may be detained in order to ensure compliance with the obligation to stay in a given place (Article 8(3)(c));

- The proposal moreover reduces the length of time required to access the labour market from a maximum of nine months to a maximum of six months from the date that the international protection application is made if, pursuant to the proposal of "regulation procedures", no administrative decision has been taken regarding the application, and provided that the delay may not be ascribed to the asylum seeker (Article 15(1)(1));

- Pursuant to Article 6(4), Law no. 234 of 24 December 2012, on 11 October 2016 the Department of European Policy at the Italian Prime Minister's Office sent both Chambers the report drafted by the Ministry of Internal Affairs on the regulatory

proposal under examination, and having not found any critical issues with regard to compliance with the principle of attribution and propriety of the legal basis, it considered the principle of subsidiarity to have been respected;

- On the other hand, as regards the principle of proportionality, the report states that this had not been complied with in the section where the proposal reduces the material conditions of reception for minors;

- The report provides an overall positive assessment of the plan and of its prospects for negotiation (with the exception of its recommendations regarding the situation of minors), “in that it contributes to the convergence of national systems, in particular regarding the uniform nature of member state reception conditions”, further stating that the project overall complies with the national interest,

having noted that:

Whereas the principle of proportionality appears to have been complied with formally, in that the proposed measures are limited to what is necessary for achieving the objective, in accordance with Article 5 of the Treaty on European Union, on the contrary the principle of subsidiarity has not substantially been complied with given that the objective of achieving greater harmonization among reception conditions in the EU for the purpose of raising the prospects of integrating applicants is not achieved through a further crackdown on secondary movements. Indeed, although it is true that this objective may not be implemented to a sufficient extent by member states individually, the combined provisions of directives, regulations, and recasts that have accumulated merely prove the Commission’s absolute impotence in achieving compliance with the key principles of managing migratory flows, that is to say, solidarity-based reception, redistribution of asylum seekers, and repatriation,

states its opposition and makes the following comments:

- Article 17-*b* introduces a new principle whereby an asylum seeker who is in a member state other than the one in which he/she is duty-bound to be has no right to make use of any conditions of reception whatsoever, and in particular the schooling and education of minors (Article 14), access to employment (Article 15), material conditions of reception (Article 16) and the terms of providing the same (Article 17), even if member states must in any event ensure a “dignified” standard of living (Article

17-b) and access to appropriate educational activities for minors. It is felt that this regulation, oriented towards penalizing the situation of asylum seekers, in some ways also penalizes minors inasmuch as it excludes them from access to schooling and education, thereby clashing with the principle – repeated on multiple occasions in the same directive and at national, Community and international level – of the best interests of the minor (this exclusion, in effect, entails incomprehensible harm to minors). It is therefore proposed to exclude minors from the restriction on accessing services pursuant to Article 14, as well as from other restrictions that, although imposed on the parent, inevitably impact the minor, with particular regard to those envisaged under Articles 16 and 17 (material conditions of reception, and the terms and conditions of service delivery);

- As far as the substitution, reduction or revocation of reception conditions are concerned (Article 19), it would be opportune, even if one of the indicated measures is adopted, for a dignified standard of living to be ensured. It is nevertheless viewed as necessary to specify explicitly what a “dignified standard of living” entails (Article 19(4)) and whether, in particular, the state must be responsible not only for healthcare but also for accommodation, living expenses or other services (so generic is the concept, for which implementation is dependent upon individual states, that it may create an increase in national and Community conflict, as well as jeopardizing the initial principle of uniform Europewide reception conditions);

- Considering that in any event there is a need to ensure the applicant a dignified standard of living, the regulation should be accompanied by additional measures (“that might cover detention, as an indicator for evaluating the dangerousness of asylum seekers, or even merely the procedure of processing the application, without, nevertheless, diminishing associated guarantees”), to be defined during negotiations;

- The promotion of safe and legal access methods remains altogether insufficient, while the document insists on so-called “secondary movements”, that is to say, migrants moving on from the country in which they arrive to other EU nations. The nation with jurisdiction for examining the application retains this role not just during the procedure but also afterwards, without any cut-off date. In this manner, any European dimension regarding the outcome of the asylum procedure is denied; no consideration whatsoever is given to the needs and aspirations of refugees with regard

to their path to integration, which would, without doubt, be fostered by the possibility of joining family members already settled in nations other than their first point of entry;

- In stark contrast to the very rationale behind the proposal, the overall framework generates a complete weakening of the right to asylum in Europe. On the contrary, it moves in the direction of making international protection within the framework of the EU more precarious, further shifting the burden to the obligations envisaged of entry-point nations;

Reducing the length of time required to access the labour market from a maximum of nine months to a maximum of six months from the date that the international protection application is made (Article 15(1)(1)) is a step on the road to integrating asylum seekers, but it collides with the reality of employment markets in many Union nations;

- Lastly, it is necessary to point out that despite the fact that in recent months going beyond the Dublin system had been prefigured, in the sense of broadening out the list of countries with jurisdiction for assessing applications for asylum, legal acts adopted recently at European level all on the contrary tend to discourage the secondary movement of migrants. It follows that despite the fact that the objective of guaranteeing the same standards of reception in all member states is something to be agreed with, it would be opportune to avoid further repercussions on states where, for geographical reasons, migratory flows are having the greatest impact.