

Standing Subcommittee on European Union Affairs

17 April 2009

Determination by the Committee

“Statement to the European Commission

1. The Standing Subcommittee on European Union Affairs EU discussed the following proposals in a public session on 17 April 2009:

a) COM (2008) 360 final/2 — Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions Policy; Plan on asylum — an integrated approach to protection across the EU **(330/EU XXIV.GP)**

b) COM (2008) 815 final — Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers **(2720/EU XXIV.GP)**

c) COM (2008) 820 final — 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) **(2738/EU XXIV.GP)**

d) COM (2008) 825 final — Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of ‘EURODAC’ for the comparison of fingerprints for the effective application of Regulation (EC) No. [.../...] 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 **(2713/EU XXIV.GP)**

e) COM (2009) 66 final — Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office **(7285/EU XXIV.GP)**

2. The Standing Subcommittee on European Union Affairs also considered the joint statement of the federal provinces of 30 January 2009 and the statement of the EU Committee of the Federal Council of 3 February 2009.

3. After detailed discussion on the basis of the information provided orally and in writing by the Federal Government and with account taken of the position of the European Parliament, the Standing Subcommittee on European Union Affairs arrived at the following result:

4. The Standing Subcommittee on European Union Affairs supports the decisions and statements listed in paragraph 2.

5. General determinations

The estimations of the consequences and impact of the proposed measures enclosed with the proposals are deemed in some respects to be incomplete or difficult to follow, particularly with regard to the financial impact on Member States, the possible impact on secondary migration and the justification for maintaining the principles of subsidiarity and proportionality.

6. Subsidiarity principle

The proposals regarding access to the labour market, the extent of social assistance and care payments and the extension of the definition of family members in particular appear to be irreconcilable with the basic principles of subsidiarity and proportionality.

7. Asylum strategy

- a) Austria firmly supports the aim of establishing a joint European asylum system. The quality of the national asylum systems should be further improved and the asylum decisions by EU Member States should be further harmonised.

- b) It therefore supports in particular the aim of strengthening the practical cooperation of Member States with one another, since effective harmonisation is contingent on uniform interpretation and application of existing provisions. A uniform decision-making basis and uniform practical application are important for minimising incentives for secondary migrations.
- c) The promotion of solidarity among Member States is welcomed. In this context, the use of teams of asylum experts by the Asylum Support Office is also supported. In order to be able to put the principle of “burden sharing” into subsequent practice, however, an effective joint EU asylum policy must first be agreed on.
- d) Austria supports “external solidarity”. The focus in this regard should be on the implementation of regional protection programmes, i.e. direct local protection. However, Austria currently questions the idea of participating in resettlement programmes. An EU approach to resettlement should be preceded by the implementation of an effective joint EU asylum policy.

8. Reception Directive

- a) The extension of the scope to include applicants for subsidiary protection is supported. This has already been implemented in Austria.
- b) Access to the labour market is within the national competence of the Member States. Austria therefore questions the proposal for harmonised access to the labour market six months after an application has been lodged, as this would create pull factors.
- c) The definition of family in the Commission proposal is very broad. Austria is in favour of retaining the core family (parent of a minor child, spouse, minor child of the asylum applicant).
- d) The current scope of basic care should be retained. An extension of basic care would cause a massive increase in the relevant costs, and the different

levels of social assistance in the Member States would encourage secondary migration.

- e) The cooperation of the asylum applicant in the process should remain a significant factor. A limitation of the grounds for withdrawal of basic care is therefore questioned.
- f) Austria questions the new conditions for detention pending expulsion in the Reception Directive as it places huge restrictions on such detention.
- g) Austria questions the extension of the group of persons eligible for protection to the mentally ill as this could lead to abuse.

9. Dublin Regulation

- a) Austria welcomes the basic principle in the current Dublin Regulation for determining the Member State responsible for examining an asylum application. The evaluation report by the Commission shows that the existing system works in principle but that its efficiency needs to be improved.
- b) Austria therefore expected that the recast version of the Dublin Regulation would contain changes that would increase the efficiency of the Dublin process, support Member States in implementation of the Dublin Regulation, remedy omissions with regard to responsibility and implementation and create legal security.
- c) The Commission has presented a draft revision that changes the basic principle of the Regulation: it no longer aims to provide a responsibility system for Member States but rather extends the rights of asylum applicants including partial freedom of choice by them regarding the Member State responsible.
- d) Austria regards the following proposed changes as particularly problematic:

- ▶ The possibility proposed by the Commission for temporary suspension of Dublin transfers is questioned. Austria believes that the responsibility of Member States should not be weakened. The system proposed by the Commission would result in a further costly and time-consuming delay in the procedures.
 - ▶ The right of Member States to intervene of their own accord should not be restricted by the possibility of its being made contingent on consent by the asylum applicant.
 - ▶ Austria is also in favour of retaining the existing definition of family as the core family (parent of a minor child, spouse, minor child of the asylum applicant).
 - ▶ The inclusion in the Regulation of provisions on detention and a limitation on the current rules regarding detention pending expulsion would make effective implementation of the Dublin Regulation more difficult.
- e) The suspension of application of the Dublin Regulation for Member States with an overloaded asylum system resulting from inadequate organisational or human rights provisions would appear to be understood as an incentive for control effects contrary to the aims of a joint asylum policy. Priority must be given to regular application of the existing standards, if necessary with Community support.
- f) New Community legislation on appeals is unnecessary and also likely to considerably hinder implementation of the Dublin Regulation.

10. EURODAC Regulation

- a) Austria supports the setting of clear deadlines for data transmission to improve the efficiency of the EURODAC Regulation. Exceptions in the event, for example, of insufficient cooperation by the asylum applicant or de facto impossibility (e.g. through admission to hospital) should be included in the Regulation, however.

- b) The extension of the Regulation to applicants for subsidiary protection in harmony with the corresponding proposed changes in the Dublin Regulation is acceptable.
- c) The establishment of a new management structure for EURODAC together with other IT systems is welcomed.
- d) Austria would like to see binding regulations for the storage and consultation of data on illegal members of third countries apprehended at the border. The compulsory storage of data on illegal residents would also be useful. EURODAC should be used as extensively as possible.
- e) The proposed changes in the EURODAC Regulation cannot be seen in isolation from the changes in the Dublin II Regulation. Agreement with EURODAC can be given only in coordination with the Dublin Regulation.

11. Asylum Support Office Regulation

Austria appreciates the efforts by the Commission to intensify practical cooperation so as to achieve greater uniformity in the application of EU asylum regulations and in this way to reduce secondary migration of asylum applicants within the EU. The Standing Subcommittee on European Union Affairs believes that unnecessary and costly bureaucratic structures should be avoided. The need to create a new European Asylum Support Office needs therefore to be demonstrated, justified in specific terms and discussed in detail.”