

## What Idea of Europe?

### A public appeal to the European Parliament to modify significantly the proposal of the Procedures Regulation

The structural reform's project of the European Asylum System marks a potential crossroads in the history of the right to international protection in Europe. It is ongoing the redefinition of the whole regulatory framework and the proposals made by the European Commission so far have raised concerns. The proposal for a new Procedure Regulation takes, in this reform project, specific relevance. If the final proposal is in line with the proposal issued by the European Commission considering the focal points, then we will have a resolute jump of paradigma in a widely pejorative direction.

The proposal formulated by the European Commission revolves around some focal points (definition of the concepts *safe third country*, *country of first asylum*, *safe origin country*, *border procedures*, *accelerated procedures*, *implicit withdrawal of demand*) that would change in a radical and pejorative way the protection standards currently in force.

For this reason, in such a delicate stage (the Committee on civil liberties, the department of Justice and Internal Affairs of the European Parliament, within which the depute Ms. Laura Ferrara plays the role of chairman of the proposal, could approve the text in the following weeks) a public appeal to the members of the European Parliament is issued: it is necessary to avoid a generalized deterioration of the rights of the potential asylum seekers. The relation between right to asylum and European space may be overall transfigured and compromised in itself.

The Organizations signing the appeal feel the urgency to take a position, in order to broaden the public awareness around this delicate challenge. It is not just a matter of describing the risks associated to the European Commission's proposal and suggesting different legal strategies. It is necessary to influence and ensure that the text to be approved by the LIBE Committee diverges significantly from what has been proposed. For this reason we address directly the members of the European Parliament to ensure that the risk of homogenization of the current standards of protection is avoided.

Below we propose the review of the most significant articles of the text issued by the European Commission. This is a schematic description but there are clearly many other articles that are matter of concerns and that should be equally radically modified. We have chosen to deal with these specific themes as more than others appear paradigmatic to the legal and political project behind the reform.

#### **Art. 45 Safe third country concept**

This article is without any doubt the main instrument for a potential externalization of the asylum right. The Regulation includes, in fact, that a third country can be designated as safe country either by the EU or a Member State. The concept of 'safe third country' is overturned, depriving it of the minimum guarantees currently provided by the Directive to protect the democratic nature of the asylum system. The ratification of the Geneva Convention would no longer be necessary, neither a law on the asylum procedure.

It would be enough to guarantee a "sufficient protection" in order to become a safe third country. Furthermore, the Directive established that the applicant should have a real link with this third country. On the other hand, in the Regulation it is also relevant for this scope, the mere transit, in a potentially prospective functional to the strategy of the agreements between third countries and single member countries or EU countries.

The admissibility examination, for those coming from a safe third country, is mandatory, also for the MSNA, although with greater guarantees. The Regulation proposal establishes that a country could be considered a safe third country if included in the common list of safe countries of origin, or in that of the individual Member States, or apart from these cases, can be considered safe (basically in case of agreements with individual third countries with Member or EU countries).

**It is proposed** to maintain the whole current art. 38 of the Procedures Directive and, in any case, to provide that:

1. The admissibility procedure is optional and not mandatory;
2. The letter (f) is inserted in paragraph 1 in order to provide that, in any case, a safe third country must have ratified the Geneva Convention without geographical restrictions and it must have a rule that regulates in a truly accessible manner the exercise of the right to apply for the international protection;
3. A paragraph 8 is added to exclude the application of this procedure to vulnerable categories, in particular minors;
4. The letter (c) of paragraph 2 is deleted (which allows a country to be considered safe even though is not included in any list);
5. The second sentence of letter (a) of paragraph 3 is deleted (the reference to the mere transit as a sufficient element to recognize an effective link between the applicant and the third country);
6. The paragraph 5 on MSNA is deleted.

#### **Art. 44 Concept of the first country of asylum**

In the Regulation proposed by the European Commission it becomes mandatory to consider whether the applicant comes from a first country of asylum. This admissibility procedure does not provide an automatic suspensive effect of the appeal. There is no list of the first asylum countries. Therefore, there is a danger that identification can actually take place on the basis of agreements, even only between individual member countries and third countries, potentially completely outside the control of the EU Parliament. Furthermore, the content of the notion of 'sufficient protection' should be established taking into account the overall structure of the right to asylum in Europe and consequently it cannot ignore the established standards for subsidiary protection at least.

**It is therefore proposed** to leave this admissibility procedure as optional and to introduce paragraph 6 in which it is stated that the appeal against the decision that declare the application inadmissible has an automatic suspensive effect until the decision on the merits. It is also proposed to add a paragraph 8 to exclude its application to vulnerable groups, and in particular to minors. Finally, it is proposed to insert an additional letter (f) in paragraph 2 to establish that, in any case, the same rights and a level of protection are ensured that are not inferior to those enshrined in the notion of "subsidiary protection". 2 and ss of the Directive n. 2011/95 / EU

#### **Art. 48 Designation of safe origin countries at Union level**

To avoid excessive centralization of the right to asylum that does not take into account, even in part, of the different needs of individual Member States, it is proposed to introduce a paragraph 5 to allow individual Member Countries to decide whether or not to adopt the list provided by the Union.

#### **Art. 41 Border procedure**

Under the current Directive the condition for adopting the border procedure is that the Member State must incorporate and regulate it by a specific regulation. On the other hand, in the new Regulation the procedure is immediately operational with no need for a legislation *ad hoc*. Furthermore, the norm on the guarantees for the detention disappears (article 26 of the Directive). Finally, there are cases where MSNAs may be subject to border procedures (for example in case of omissions of pertinent information or false declarations). The border procedure can present numerous pitfalls, both because it establishes a generalized use of administrative detention up to four weeks, and because (as the Greek experience has demonstrated) the procedure is conducted in extremely peripheral areas, where the resources of the civil society are more limited and the work of controlling and monitoring the correct application of the law is more complex.

It is essential to refer the use of the border procedure to a specific discipline, which details the guarantees of the applicants and excludes the hypothesis of opening towards the MSNAs. **It is proposed** to reinstate the incipit of the current art. 43 of the Directive "*The Member States may provide procedures, in accordance with the basic principles and guarantees as referred in Chapter II*". Furthermore, **it is proposed** to reinstate the art. 26 of the current Directive and delete the letter d) of paragraph 5 concerning the MSNA.

#### **Art. 40 Accelerated procedure**

This is one of the articles that may disrupt, in fact, the guarantees of asylum seekers. In particular, we deem that it is completely an unacceptable forcing (stretch) considering mandatory the use of the accelerated examination procedure, especially taking into account that one of the main hypotheses will concern the applicants coming from a safe country of origin. In fact, the adoption of a list of safe countries of origin by all Member States becomes mandatory and one common list is adopted by EU Commission as well. In these cases it is possible to apply the border procedure. There is a well-founded risk that the border countries, such as Italy and Greece, could systematically apply accelerated procedures based on the country of origin, concentrated in a few landing locations close to the borders.

Therefore, **it is proposed** to limit the adoption of the accelerated procedures to a mere possibility, without transforming it into an obligation, like what is foreseen for border procedures, by introducing the word "*may*" in the first sentence of paragraph 1.

Furthermore, **it is proposed** to delete the letter g) of paragraph 1, which establishes the accelerated procedure (therefore the reduction of the rights of defense in case of rejected applications ) also for some violations of Dublin Regulation, in line with the proposal recently approved by European Parliament.

### **Art. 39 Implicit withdrawal of the application**

This is one of the rules that raises more doubts. The assumptions of implicit withdrawal are excessively extended and the guarantees of the applicants are reduced instead. In particular: 1. The Directive provides a "reasonable time" for the formalization of the application and it is optional to consider the non-presentation as an implicit withdrawal. In the new Regulation it becomes compulsory and the deadline for formalizing the asylum application is set in 10 days, maximum in one month. **It is proposed** to exclude the obligation, taking into account that the conditions of some countries, especially at the border, could make it impossible to formalize it in such a short time of period.

2. As already highlighted, it appears unreasonable to impose the implicit withdrawal for cases of not cooperating for identification purposes. **It is proposed** to delete the sentence contained in the letter c) paragraph 1.

3. As already noted, it appears too vague the provision of an obligation, for the applicant, to provide immediately "necessary" information, especially if we consider that in case of non-compliance occurs the imposition of implicit withdrawal. So **it is proposed** in the letter c) of the paragraph 1 to refer to the information "essential" and not also "necessary".

4. **It is proposed** to remove the lett. a) of paragraph 1.

5. The provision of paragraph 1 lett. f) appears to be too vague to impose the implicit withdrawal of the application of those who have repeatedly violated the reporting obligation: **it is proposed** to include, in this sense, the obligation of the State to give written notice to the applicant that the subsequent violation of the communication obligation will be considered as an implicit withdrawal of the application.

6. The Directive establishes a suspension of the procedure of at least 9 months before imposing the implicit withdrawal. In the Regulation this term is reduced to one month from the written notice. The reduction does not take into account the strong bureaucratic and movement difficulties, as well as other causes that could realistically make the one-month deadline too short. **It is proposed** to reintroduce the 9-month deadline in paragraph 2.