

**The Committee of the National Council of the Slovak Republic for the European Affairs has adopted reasoned opinion on the non-compliance of the Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] COM(2020)610 with the principle of subsidiarity in the following points:**

- The proposal for a regulation introduces a new solidarity mechanism which contains mandatory elements, as Member States will be required to make one of the contributions set in the Article 45 par. 1 and 2 of the draft regulation. Article 54 of the draft regulation provides that Member States will be under the obligation to contribute through a share calculated on the basis of a distribution key based on 50% of GDP and 50% of the population, with the beneficiary Member State's share being included in the distribution key to ensure that all Member States apply the principle of fair sharing of responsibility. Neither the explanatory memorandum nor the draft regulation itself provides a legal basis for determining such a specific distribution key, which, apart from gross domestic product and population, does not take into account any other Member States' specificities. Ultimately, the Commission will have the power to decide whether the Member State's contribution is sufficient and, if not, the Member State concerned will be obliged to contribute in a predetermined manner.
- One of the predetermined forms of solidarity contributions is the so-called return sponsorship, which can be perceived positively, but not if it is subject to limitation of the national rights of Member States. In case the return is not successfully completed within 8 months, the individuals concerned will be transferred to the sponsoring State, which will then take full responsibility for them. According to Art. 6 par. 5 of the Return Directive, to allow persons to remain in the territory of a Member State until the outcome of any proceeding is possible, but not mandatory. From the point of view of the current success of returns (less than 40%), we perceive return sponsorship only as a variant of the system of mandatory relocations. Again, the draft regulation does not take into account at all the fact that some Member States are not migrants' destination countries. Their relocation to a Member State will not prevent secondary movements without restricting the free movement of persons and may also create security risks.
- Another issue is the relocation of applicants for international protection who are not involved in border proceedings. Extensive powers are given to the European Union Agency for Asylum and the European Border and Coast Guard Agency, in coordination with the Commission, which will draw up a list of authorized persons to be transferred, indicating the Member States of the transfer.
  - If the Member States' solidarity contributions are not sufficient to ensure a sustainable solidarity response, the Commission should be empowered to adopt an implementing act setting out the total number of third-country nationals to be relocated and the share of that number for each Member State calculated according to the above mentioned distribution key. Should the measures referred to result in more than 30% of the total number of relocations remaining uncovered, the Commission should be able to adjust those Member States' contributions so that half of their share is in the form of either relocation or return sponsorship.
  - The European Union Agency for Asylum does not have co-decision powers on the relocation of specific persons to specific Member States. In addition, in accordance with Art. 4 (4) of the TFEU: "In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy, however the exercise of that competence shall not result in Member States being prevented from exercising theirs."

- According to Art. 4 (2) of the EU Treaty: „*The Union shall respect the equality of Member States before the Treaties and their national identities ... In particular, national security remains the sole responsibility of each Member State.*“Decisions on the admission of persons to its territory clearly fall within the competence of each Member State which decides on the basis of its national asylum laws. The principle of subsidiarity does not allow for EU intervention where the matter can be dealt with effectively by the Member States at national, regional or local level, ie. this principle clearly favors Member State action.
- Point 74) of the draft regulation states that *the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in matters of the identification of family members or relatives of an unaccompanied minor.* Article 290 TFEU in its paragraph 1 clearly states that the power to adopt non-legislative acts of general application may be delegated to the Commission to supplement or amend only non-essential elements of a legislative act. This delegation is subject to strict conditions, namely that the delegated act cannot change the essential elements of the existing law. The objectives, content, scope and duration of the delegation of power must be defined in the legislative act. Issues of identification of family members or relatives of an unaccompanied minor cannot be considered as non-essential elements of a legislative act. The EU Council will thus not be able to intervene in the Commission's decision-making on key issues of the present Pact. On the basis of the above, it can be concluded that the draft regulation in Art. 15 (6), Art. 24 (3) is incompatible with Article 290 TFEU and at the same time infringes the principle of proportionality under Article 5 (4) of the Treaty on European Union and Protocol no. 2 on the application of the principles of subsidiarity and proportionality.
- Article 53 of the draft regulation allows the Commission to adjust Member States' solidarity contributions to ensure that half of their share will be in the form of relocation or return sponsorship if a Member State is under migratory pressure. This provision clearly violates primary law, namely Art. 78 (3) of TFEU: *In the event of one or more Member States being confronted by 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. It shall act after consulting the European Parliament.* Primary law thus does not give the Commission the power to take measures to reduce migratory pressure. The provision of the draft regulation is contrary not only to primary law but also to the principle of proportionality.