



EUROPEAN COMMISSION

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Dear Mr President,

Thank you for your observations regarding the Commission proposals for amending the Reception Conditions Directive {COM(2008)815} and the Dublin Regulation {COM(2008)820}. The proposals aim to ensure higher standards of protection for asylum applicants as well as to increase the efficiency of the asylum system in line with the objectives set out by the Tampere Council Conclusions and by The Hague Programme which called for the establishment of a Common European Asylum System (CEAS).

Allow me to briefly address some of the main issues of concern raised in your submissions.

Concerning the principle of subsidiarity the Impact Assessment accompanying the proposal has demonstrated deficiencies in Member States' current policies regarding the level of reception conditions granted to asylum applicants as well as wide divergences in the implementation of the Directive. It should be underlined in this respect that Member States' unilateral actions would not ensure higher reception standards throughout the EU for asylum applicants nor prevent those secondary movements linked to the divergences of national reception policies.

As regards the principle of proportionality, I would like to indicate that the Commission has carefully assessed the impact of the proposed measures and is of the opinion that they do not go beyond what is necessary to achieve the set objectives.

In particular, in relation to the proposal amending the Reception Conditions Directive, I would like to underline that the proposal allows Member States a certain degree of flexibility to decide on the conditions as well as on the timeframe for granting access to their labour markets. Neither does the proposal prohibit the use of detention in the area of asylum. On the contrary, it aims to ensure that detention is applied lawfully, namely that it respects the principles of necessity and proportionality and that it is accompanied by legal and procedural guarantees in line with international law.

Member States are not obliged to grant asylum applicants access to the social benefits available for nationals as you imply in your contribution. That would indeed be disproportionate since asylum applicants would be placed in a more advantageous position taking into consideration the fact that they also have access to material reception conditions not available to nationals (such as accommodation, clothing and food). The proposed provision merely aims to ensure that when determining the level of material

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reception conditions to be granted to asylum applicants, Member States should ensure that this is not below the level of social support required to guarantee a dignified standard of living for nationals.

Regarding the proposal amending the Dublin Regulation, I would stress that the definition of 'family members' is only extended in relation to minors, in compliance with the principle of the best interests of the child. The rules on detention represent a balanced approach, between ensuring adequate protection for asylum applicants and allowing Member States to use detention where it is duly justified, thus not hindering the smooth application of the Dublin procedure. Moreover, the decision to suspend Dublin transfers will not be taken automatically but will be the result of a careful assessment of the impact on both the Member State to which the transfers are suspended and on the other Member States, in view of ensuring a proportionate application of this measure.

It is equally important to highlight that the above mentioned issues have been identified as problematic by various stakeholders. It is therefore necessary to adequately address these deficiencies during the second phase of the asylum legislation in order to ensure that the Common European Asylum System is both efficient and ensures a high degree of protection.

Finally, on the issue of the costs involved, in particular from the implementation of the proposal amending the Reception Conditions Directive, some of the proposed measures might indeed require additional financial expenditure. However as pointed out in the relevant Impact Assessment, Member States could also make savings, in particular due to the proposed provisions restricting the use of detention and facilitating access to the labour market. It should also be recalled that Member States could also take advantage of financing opportunities available under the European Refugee Fund, in view of increasing their reception capacities and improving reception conditions.

I hope that the clarifications provided above satisfactorily address the main concerns expressed in your submissions.

Yours sincerely

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Vice-President of the European Commission