



EUROPEAN COMMISSION

Brussels,
C/2009/

Dear Mr Sobotka,

I would like to thank you for transmitting the resolutions of the Senate of the Czech Republic on the Commission proposals amending the Reception Conditions Directive and the Dublin Regulation [COM(2008)815 and COM(2008)820].

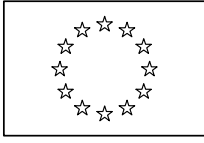
In line with the Commission's decision to encourage National Parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response and hope you will find it a valuable contribution to your own deliberations.

Yours sincerely,

Margot WALLSTRÖM
Vice-President of the European Commission

Mr. Přemysl Sobotka
President of the Senate
of the Czech Republic

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EUROPEAN COMMISSION

Brussels, September 2009

**COMMENTS OF THE EUROPEAN COMMISSION ON A RESOLUTION FROM
THE CZECH SENATE**

COM(2008)815 – PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN MINIMUM STANDARDS FOR THE RECEPTION OF ASYLUM SEEKERS.

COM(2008)820 - PROPOSAL FOR A DIRECTIVE 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.

The Commission thanks the Senate of the Czech Republic for its opinion on the Commission proposals amending respectively the Reception Conditions Directive and the Dublin Regulation.

The proposals aim to ensure higher and more harmonised standards of protection for asylum applicants as well as to increase the efficiency of the asylum system. These objectives are fully in line with the Tampere Council Conclusions and The Hague Programme which called for the establishment of a Common European Asylum System (CEAS) that is both efficient and ensures a high degree of protection. More recently, the European Pact on Immigration and Asylum adopted by the European Council provided further political endorsement for these objectives, by calling for initiatives to complete the establishment of the CEAS with a view to offering a higher degree of protection.

The Commission would like to address the main concerns submitted in the Senate's opinion.

Concerning the proposal amending the Reception Conditions Directive, the Commission has taken note of the possible difficulties in relation to applying the proposed time limit of 72 hours regarding the confirmation of detention by a judicial authority. This issue will be further discussed in the framework of the ongoing negotiations with the Council and the European Parliament.

The Senate's opinion further indicates that the current provisions of the Directive on access to material reception conditions already provide adequate standards and therefore should not be revised. However, the results of the Commission's evaluation of the implementation of the Reception Conditions Directive [COM 2007(745)] underline concerns about Member States' current policies regarding the level of material support granted to applicants, noting in particular that such support is often too low to cover subsistence. Consequently, it was considered necessary to introduce in the Directive clearer rules on access to material reception conditions as well as to enhance the Commission's monitoring role as guardian of

the Treaties in view of ensuring that material support guarantees a dignified standard of living for applicants throughout the EU.

Furthermore, concerning the Senate's submission that access to the labour market for applicants should be left to the decision of Member States and should not be harmonised, the Commission would like to recall that the current Directive already regulates this issue, in particular by introducing a specific timeframe on access to employment: the Commission proposal aims at reducing from the current twelve months to six months the maximum period during which Member States can deny access to the labour market to asylum applicants. In this respect, the proposal does not interfere in the competences of the Member States to continue regulating the conditions of access to their national labour markets, as long as these conditions do not create disproportionate and unjustified obstacles to the exercise of their right to work. Moreover, the Commission considers that the proposed amendments could have a positive impact on the financial autonomy of asylum seekers, reduce the burden on Member States' finances as well as reduce incitements to work in the illegal economy.

It should also be noted that the European Parliament's report on the Commission proposal amending the Reception Conditions Directive, adopted on 6 May 2009, approves in general the Commission's position, including the proposed amendments on access to the labour market.

Concerning the proposal amending the Dublin Regulation, although the Commission agrees that the Dublin system is not a burden sharing mechanism, the relevant Impact Assessment demonstrated that it may *de facto* result in additional burdens on Member States that have limited reception and absorption capacities and that find themselves under particular migratory pressure. Therefore, it was considered necessary to introduce a specific measure allowing for the temporary suspension of Dublin transfers towards the affected Member States. It should be stressed that this measure will be applied only in exceptional cases and will not endanger the smooth operation of the system.

The Commission has equally proposed the possibility to use such exceptional measure also in cases where there are concerns that Dublin transfers could result in applicants not benefiting from adequate standards of protection in the responsible Member State, in particular in terms of reception conditions and access to the asylum procedure. As specified in the proposal, any decision to suspend transfers would have to include an examination of the relevant circumstances prevailing in the Member State towards which transfers could be suspended. In this respect, the Commission will use any relevant information at its disposal regarding the reception capacity or the asylum procedures in the concerned Member State.

The opinion of the Czech Senate also notes that the proposed provisions in relation to remedies against a transfer under the Dublin procedure would create practical difficulties for the national court system. It should be underlined that a right to an effective remedy must always be guaranteed by Member States in line with international obligations. Moreover, the proposed provision does not introduce an automatic suspensive effect but ensures that the need to suspend a transfer until a final decision on appeal is taken is examined on a case by case basis. In this respect a balanced approach is guaranteed since, on the one hand, adequate protection for applicants is ensured and, on the other hand, the efficiency of the system is retained.

With regard to the opinion of the Czech Senate on the issues of procedural safeguards for applicants under the Dublin procedure and on the issue of detention, the relevant Impact

Assessment demonstrated that the Dublin system contains several loopholes in this respect. In particular, it has been highlighted that the effectiveness of the right to remedy against a Dublin transfer decision is not fully guaranteed to the applicants, that the principle of effective access to the asylum procedure is not always ensured and that applicants subject to the Dublin procedure are detained on a systematic basis. Therefore the Commission considered it necessary to strengthen the existing legal and procedural safeguards, in line with international and European human rights standards.

The Commission hopes that these clarifications satisfactorily address the main concerns expressed in your submission.