



EUROPEAN COMMISSION

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C(2016) 1218 final*

Dear President,

The Commission would like to thank the Senát for its Reasoned Opinion on the proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 {COM(2015) 450 final}.

This proposal forms part of a broader package of ambitious measures that the Commission has proposed and will propose to respond to the current refugee crisis and to prepare for future challenges, in line with its European Agenda on Migration {COM(2015) 240 final}. The Commission welcomes the Senát's broad support towards other EU measures that aim to address the migration crisis, namely through the strengthened control of the EU external borders, the fully operational hotspots, the cooperation with third-countries and the humanitarian aid to the most affected regions.

The Commission is currently undertaking a comprehensive review of the Dublin system, by conducting an evidence-based review covering the legal, economic and social effects of the system. This work as well as the experiences reached with the implementation of the temporary emergency relocation schemes will constitute the basis for the upcoming Commission's proposal on the reform of the Dublin Regulation, announced by the Commission for March 2016. In addition, the Commission is currently assessing the need for a more comprehensive reform of the Common European Asylum System.

The ongoing refugee crisis has shown that extreme pressure on a Member State's asylum system may jeopardise the application of the Dublin rules. The current system does not allow for derogation from the responsibility criteria, thus generating imbalances and in some cases aggravating the crisis. The Commission therefore proposed to amend the Dublin Regulation in order to set up a crisis mechanism for the relocation of applicants in clear need of international protection. This will allow the EU to respond to an urgent situation and help Member States facing an emergency situation, without having to go through a lengthy adoption procedure each time.

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Discussions between the Commission and the co-legislators concerning the proposal are now underway and the Commission considers this proposal as one of priority pending proposals and therefore hopes that an agreement will be reached in the near future.

As regards the concerns expressed in the Reasoned Opinion, the Commission welcomes the inquiry the Senát has carried out into this important subject, but does not share the conclusions drawn in the Opinion, notably that the Commission's proposal is based on a wrong legal basis and is not in line with the subsidiarity and proportionality principles.

The Commission has carefully considered the issues raised by the Senát in its Opinion and would like to offer additional observations as set out in the Annex.

Concerning the Senát's Opinion on the proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary {COM(2015) 451 final}, the Commission would like to refer to its reply from 19 November 2015 to the Senát on the Commission proposal COM(2015) 286 final.¹

Finally, the Commission would like to thank the Senát for its Opinion on the proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU {COM(2015) 452 final}, on the Communication from the Commission to the European Parliament and the Council EU Action Plan on return {COM(2015) 453 final} and on the Joint Communication to the European Parliament and the Council Addressing the Refugee crisis in Europe: The Role of EU External Action {JOIN(2015) 40 final}.

The Commission appreciates that the Senát welcomes and supports these proposed measures.

The Commission hopes that the clarifications provided address the issues raised by the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*

¹ C(2015)7998 final

ANNEX

Legal basis

In so far as this proposal amends Regulation (EU) No 604/2013, it should accordingly be adopted on the same legal basis as that Regulation, namely Article 78, second paragraph, point (e) of the TFEU, in accordance with the ordinary legislative procedure.

The overall objective of this legislative proposal is to ensure that the Union has at its disposal a robust crisis relocation mechanism to structurally deal with situations of crisis in the asylum area in an effective manner. In crisis situations jeopardising the application of Regulation (EU) No 604/2013 due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons in a certain Member State, of such a magnitude as to place extreme demands on its asylum system, the Commission would be empowered to apply the crisis relocation mechanism for the benefit of this Member State by means of a delegated act. The Commission delegated act would determine the specific conditions for the mechanism's application, inter alia the number of persons to be relocated and their distribution in accordance with the proposed distribution key. Therefore, whereas the application of the crisis relocation mechanism to a specific situation would remain temporary, the proposal itself aims to introduce in Regulation (EU) No 604/2013 a stable framework making its implementation possible.

As it follows, the proposal establishing a crisis relocation mechanism has to be distinguished from the proposals of the Commission on the basis of Article 78(3) TFEU for the benefit of certain Member States confronted with a sudden inflow of third country nationals on their territories. While the measures proposed by the Commission on the basis of Article 78(3) TFEU are provisional, the proposal establishing a crisis relocation mechanism empowers the Commission to apply by means of delegated acts derogations from the rules set out in Regulation (EU) No 604/2013 for determining the Member State responsible for examining an application for international protection. In well-prescribed crisis situations, the distribution key for determining responsibility for examining applications will be applied instead of these rules.

Furthermore, the proposal for a crisis relocation mechanism under Article 78(2)(e) TFEU is in any case without prejudice to the possibility for the Council to adopt in the future, based on a proposal from the Commission, emergency measures based on Article 78(3). The adoption of such emergency measures based on Article 78(3) TFEU will remain relevant in other types of exceptional circumstances characterised by a sudden inflow of nationals of third countries, where the conditions for applying the permanent crisis mechanism may not be met, but where an emergency response, encompassing possibly wider migratory support, is nevertheless needed.

Subsidiarity and proportionality

The Union shares competence with the Member States over the area of freedom, security and justice in accordance with Article 4(2) of the Treaty on the Functioning of the European Union (TFEU). Therefore, the powers under Title V of the TFEU must be exercised in accordance with Article 5(3) of the Treaty on the European Union (TEU) on the subsidiarity principle; i.e. only if and in so far as the objectives of the proposed action cannot be

sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

It is also useful to note that the principles of solidarity and fair sharing of responsibilities shall in accordance with Article 80 TFEU govern EU policies in the area of migration, asylum and borders.

As such, the present proposal would introduce a relocation mechanism with a view to structurally deal with crisis situations in any Member State generated by large and disproportionate inflow of persons and achieve a fair sharing of responsibilities between Member States in times of crisis. By definition, EU action will intervene where a Member State cannot alone cope with the situation. In addition, the proposal aims at ensuring the correct application of the Dublin system in times of crisis and at tackling the issue of secondary movements of third country nationals between Member States, a problem which is transnational by nature.

Action by individual Member States would not be sufficient to address these situations. The implementation of uncoordinated solutions would not be able to achieve a comprehensive response to the disproportionate inflow of persons nor a fair sharing of responsibility between the Member States. What is more it would not provide a credible solution to address secondary movements within the EU.

It is clear that actions of individual Member States cannot satisfactorily reply to the common challenges all Member States are confronted with in this area. The principles of solidarity and the fair sharing of responsibility enshrined in Article 80 TFEU underline the essential nature of EU action in this field.

In relation to the proportionality principle, it is reminded that in accordance with Article 5(4) TEU the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. In this regard, Regulation (EU) No 604/2013 does not provide, in its current form, for tools enabling sufficient responses to situations of extreme pressure put on Member States' asylum systems. The Dublin system is not equipped with such a built-in flexibility mechanism enabling a swift response to exceptional situation. Moreover, the various financial and operational measures available to the Commission and the EASO to support the asylum systems of several Member States have been proven insufficient to alone address crisis situations. It is thus necessary and appropriate to introduce such a crisis response mechanism in the Dublin system through an amendment of Regulation (EU) No 604/2013, in order to provide an adequate framework for urgent and severe situations in the asylum area.

In the Commission's view, the proposal therefore complies with the subsidiarity and proportionality principles.