



EUROPEAN COMMISSION

*Brussels, 15.6.2021  
C(2021) 4451 final*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinion on 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 final}.*

*The New Pact on Migration and Asylum, with its accompanying proposals, addresses all the elements for a comprehensive European approach to migration. It sets out improved and faster procedures throughout the asylum and migration system and balances the principles of fair sharing of responsibility and solidarity. This is crucial for rebuilding trust between Member States and confidence in the European Union's capacity to manage migration.*

*The Commission welcomes the support of the Bundesrat concerning the overall approach laid down in the Asylum and Migration Management Regulation. The suggestions raised by the Bundesrat in points three, nine, ten and thirteen of its Opinion will be given due consideration in the ongoing technical discussion on the proposal. In response to the Bundesrat's comments on other aspects of the proposal, the Commission would like to refer to the attached annex.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Ylva Johansson  
Member of the Commission*

*Mr Reiner HASELOFF  
President of the Bundesrat  
Leipziger Straße 3 – 4  
10117 BERLIN*

## Annex

*The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications.*

*With respect to the second and sixth point raised by the Bundesrat, the Commission notes that the concept of ‘systemic flaws’ stems from the case law of the Court of Justice on its interpretation of Member States’ obligations pursuant to Article 4 of the Charter of Fundamental Rights of the European Union when transferring applicants to other Member States under the Dublin Regulation. The Commission deliberately decided not to further define this concept, as the decision on whether a transfer in an individual case cannot be carried out due to a risk of violation of Article 4 of the Charter is for the national courts. When carrying out this assessment, the national courts must take into account the interpretations given by the Court of Justice of this Article, and it would be impossible for the Commission to lay down in secondary law an exhaustive definition of the conditions when this Article should be applied in individual cases.*

*As regards the scope of appeals proposed in Article 33(1), it will include an assessment of whether the criteria linked to family reunification have been correctly applied, and whether the transfer entails a risk of inhuman or degrading treatment in violation of Article 4 of the Charter. The Commission points out that the health of the person concerned has been assessed as relevant by the Court in its interpretation of whether Article 4 is breached.*

*On the fourth point raised with respect to secondary movements, the Commission would like to highlight that, in view of the aim to prevent absconding and secondary movements, the proposed rules must be seen in connection with each other. Clear obligations with proportionate consequences in case of violation have been proposed in Articles 9 and 10, and the current rules that allow the applicant’s behaviour to influence the shift or cessation of responsibility have been deleted. The scope of the criteria linked to family reunification have been extended to include siblings and families formed in transit, which will limit unauthorised movements by applicants who want to be with their family since such family reunification will in the future be part of the binding criteria for the determination of the responsible Member State. The criteria linked to visa and residence permits, as well as the criterion on irregular entry, have been extended in order to be applicable when the application is registered within three years from the expiry of the respective document or the irregular entry took place. The take-back procedure has been significantly simplified in order for Member States who are subject to unauthorised movements to quickly apply the procedure, including for beneficiaries of international protection, when the examination of the application is not their responsibility.*

*With respect to the fifth, seventh and eighth point raised by the Bundesrat on the issue of time limits, the Commission considers that it is necessary to harmonise the time limits for the different steps of the procedure to determine the Member State responsible for examining an application for international protection in order to ensure that the applicant has quick access to the procedure for granting international protection. As far as the consequences of non-compliance with time limits are concerned, the current Dublin rules have proven to be counter effective, as they allow for a shift of responsibility once the deadlines are not*

*respected. In order to fully achieve the objectives of the proposal to ensure quick access to the asylum procedure and to ensure that an application for international protection is examined by a single Member State, it is the Commission's view that the legal consequences for non-compliance with certain time limits should be considered as a failure to comply with the EU legislation rather than a shift of responsibility. This concerns in particular the time limits for sending a take back notification, taking a transfer decision and taking a decision on the appeal or review. The Commission also notes that the proposed time limits are inspired by previous negotiations between Member States on the 2016 proposal, and remains open to discuss technical details at technical level.*

*The Commission regrets the rejection by the Bundesrat of the time limit set for taking a decision on a request for suspensive effect, proposed in Article 33(3). The Commission notes, however, that EU law includes time limits for courts in other areas, and the Commission considers the proposed time limit to be sufficient in order to assess whether the applicant should be allowed to remain in the determining Member State pending the outcome of the appeal or review. The Commission does not consider the time limit to circumscribe the judicial independence of national courts or tribunals.*

*On the Bundesrat's observations on Article 35 (1), the Commission would like to highlight that the proposal provides two starting points for the calculation of the transfer time limit. Where no suspensive effect is granted pursuant to Article 33(3), the transfer must be carried out within six months of the acceptance of the take-charge request or of the confirmation of the take-back notification. Where suspensive effect is granted pursuant to Article 33(3), the transfer must be carried out within six months of the final decision on an appeal or review of the transfer decision. Article 35(1) and Article 33(3) first subparagraph of the proposal correspond to Article 27(3)(c) and Article 29(1) of Regulation (EU) No. 604/2013. The Commission has not proposed changes to these provisions in substance.*

*With respect to the issue of absconding, the Commission agrees with the Bundesrat that it is of primary importance in the proposal. However, the Commission stresses that the objective of the process for determining the Member State responsible for examining an application for international protection is to ensure quick access to the procedure for granting international protection. This proposal seeks to make this process more effective, by setting shorter time limits and ensuring that each step of the procedure is initiated as soon as possible, and that the time limits set out are the maximum time limits to be applied. The Commission therefore considers that six months to organise a transfer, while the applicant is present and available to the authorities, is sufficient.*