



EUROPEAN COMMISSION

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*Mr Konstantinos TASSOULAS
President of the Voulí ton Ellínon
11, Av. Vassilissis Sofías
GR – 10021 ATHENS*

Dear President,

The Commission would like to thank the Voulí ton Ellínon for its Opinion on the five proposals for Regulations of the European Parliament and of the Council that are part of the New Pact on Migration and Asylum {COM(2020) 610-611-612-613-614 final}¹.

The New Pact on Migration and Asylum and its accompanying proposals cover 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 capacity of the European Union to manage migration.

The Commission takes the concerns expressed by the Voulí ton Ellínon seriously. In response to these comments, the Commission would like to refer to the attached annex.

¹ 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}; amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU {COM(2020) 611 final}, the proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 {COM(2020) 612 final}; proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum {COM(2020) 613 final}; amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818 {COM(2020) 614 final}.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Vouli ton Ellínon in its Opinion and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Ylva Johansson
Member of the Commission*

Annex

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

As regards the so-called package approach, the Commission considers that some proposals, notably the proposals for a European Union Asylum Agency (EUAA), on Eurodac as well as on the Union Resettlement Framework, should be adopted as soon as possible. This would allow for progress being made on essential files which would inter alia, enable the provision of concrete support to the operational needs of the Member States. The adoption of these files would not pre-empt the discussions on the balance between solidarity and responsibility.

The Commission agrees with the Vouli ton Ellínon on the importance of the strong participation of the benefitting Member State in the triggering and the functioning of the solidarity mechanism for migratory pressure. The respective provisions would be directly applicable and would provide the necessary degree of uniformity and effectiveness needed in the application of EU procedural rules on asylum in a situation of crisis and force majeure. Notably, the mechanism would be triggered either at the request of the relevant Member State or by the Commission at its own initiative. Moreover, the holistic assessment of pressure, as well as the determination of the relevant solidarity contributions, will be carried out by the Commission in consultation with the benefitting Member State.

The screening as foreseen in the proposal on screening of third country nationals at the external borders {COM(2020) 612 final} introduces a pre-entry step after which persons are swiftly referred to the appropriate procedure, either the asylum or the return procedure, and in both cases, all safeguards, including the right to an effective remedy are guaranteed. The proposed provision according to which third-country nationals apprehended in connection with an unauthorised crossing of the external border or applying for international protection at external border crossings points shall not be authorised to enter the territory of the Member States pending screening would in no way entail that Member States have to exclude part of their territory from being designated as such or to carry out the screening in facilities outside their territory. As provided for in Article 6 of the Proposal, the screening of those third-country nationals is to be conducted at locations situated at or in proximity to the external borders which does not mean that the persons concerned can be prevented from remaining physically on the territory of the Member States concerned, including those third country nationals who have been disembarked following a search and rescue operation. What the proposal entails is that their entry shall not be authorised, which must be understood as an authorisation to enter in legal terms. This approach is consistent with the already existing applicable law and practice at border crossing points at the airports or in the so-called second line checks, when there are doubts concerning the fulfilment of entry conditions set out in the Schengen Borders Code. During these checks, it is considered that the persons concerned have not been authorised to enter into the territory and necessary measures to avoid absconding can be taken.

The screening should be as short as possible and, in a normal situation, should not exceed five days. Nevertheless, the proposal provides that in exceptional circumstances where a disproportionate number of third country nationals need to be subject to screening at the same time, that period may be extended by a maximum of an additional 5 days. Moreover, if the screening has reached the maximum duration of 5 days, or 10 days in exceptional situations, the screening should end immediately, even if not all steps have been finalised, and, depending on each case, a procedure for assessing an asylum application or a procedure on return or refusal of entry, which will lead to a decision that can be judicially reviewed, should start immediately. Therefore, the screening constitutes a necessary intermediate step complementing and enhancing the already existing harmonised rules of the Schengen Borders Code and it will not amount to keeping persons in 'limbo status'.

According to the proposal on screening, the Member States should determine appropriate locations for the screening at or in proximity to the external border taking into account geography and existing infrastructures, ensuring that apprehended third-country nationals as well as those who present themselves at a border crossing point can be swiftly submitted to the screening. The proposal leaves a margin of discretion to Member States on the choice of locations as well as on the measures necessary for keeping screened persons at the disposal of authorities during the screening. The proximity of the border is important for the screening at the external border. The Commission does not share the concern, expressed in the Opinion, that the setting up of screening locations close to the border will act as a pull factor for irregular migration. It rather considers that the stringent application of the proposed screening Regulation is likely to discourage irregular migration since it will enhance the compliance with EU border, return and asylum rules.

As regards the expenses related to these new tasks, the proposal sets out that these can be covered by the resources available under the new multiannual financial framework 2021-2027.

The Commission agrees with the Vouli ton Ellínon on the importance of effectively organising return sponsorship. The purpose of return sponsorship is to ensure that well-coordinated collective efforts of all actors concerned – including for instance with Frontex – will help to ensure that the return is carried out as swiftly as possible offering real support to the benefitting Member State.

The Commission also agrees with the Vouli ton Ellínon that the Member State responsible for examining the application should be determined primarily based on a set of criteria. In the proposal for an Asylum and Migration Management Regulation, the Commission aimed to limit the number of cases that fall under the responsibility of the Member State of first entry, by adding a number of elements, e.g. the widening of the definition of family members, the extended application of the criteria linked to residence permits and visas, as well as the addition of a criterion linked to the possession of diplomas and qualifications. The first entry into EU territory criterion will only be applicable insofar as the other criteria are not applicable. Moreover, the application of

this criterion would be counter-balanced by the application of the envisaged solidarity framework.

The Commission agrees with the Vouli ton Ellínon on the need to ensure full implementation of the EU-Turkey Statement of March 2016. The EU-Turkey Statement remains valid and should continue to be fully implemented as the key framework for cooperation on migration. This is an engagement of mutual trust and delivery that requires commitment and continuous efforts from all sides. Despite challenges, the Statement has produced tangible results leading to a significant decrease of loss of human lives, a reduction in irregular crossings and perilous migrant journeys from Turkey to the EU, and improving the situation of refugees and migrants in Turkey. The Commission is delivering on its commitments in the Statement, including the provision of financial assistance under the Facility for Refugees in Turkey and resettlements from Turkey to the EU. The Commission expects Turkey to stand by all its commitments, including preventing irregular migration to all Member States in the EU, and resuming the readmission of returnees from the Greek islands, as noted in the Joint Communication of the Commission and the High Representative on the State of play of EU-Turkey political, economic and trade relations to the European Council adopted on 22 March 2021².

² JOIN(2021) 8.