



EUROPEAN COMMISSION

*Brussels, 9.3.2017  
C(2017) 1560 final*

*Mr László KÖVÉR  
President of the Országgyűlés  
Kossuth Lajos tér 1-3.  
HU – 1357 BUDAPEST*

*Dear President,*

*The Commission would like to thank the Országgyűlés for its reasoned Opinion on the proposal for a Regulation 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 (recast) {COM(2016) 270 final} ('Dublin proposal').*

*In April 2016, the Commission set out priorities for a structural reform of the Common European Asylum System in its Communication 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe'<sup>1</sup> and presented two sets of proposals to reform the Common European Asylum System on 4 May 2016 and 13 July 2016. The proposal referred to in the Opinion forms part of first package of legislative measures<sup>2</sup> aiming to create a more humane, fair and comprehensive European asylum policy as well as to manage migration in a credible and sustainable way.*

*The Commission regrets the views of the Országgyűlés that the proposal does not comply with the principle of subsidiarity. The purpose of this proposal is to recast the existing Dublin III Regulation in order to provide a fairer, more efficient and more sustainable system to determine the Member State responsible for examining asylum applications and to keep the existing basic principle – asylum seekers should, unless they have family elsewhere, apply for asylum in the first country they enter. This proposal introduces a new fairness mechanism to ensure no Member State is left with a disproportionate pressure on its asylum systems and to ensure that in such cases, there must be solidarity and a fair sharing of responsibility within the EU.*

*The large-scale, disorderly arrival of migrants and asylum seekers in 2015 exposed structural weaknesses in the design and implementation of the existing Dublin System.*

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<sup>1</sup> COM(2016) 197 final.

<sup>2</sup> COM(2016) 270, 271 and 272 final.

*According to the current rules, the disproportionate burden is on Member States of first irregular entry, and this has been seen in 2015 and the consequences are still there in 2017.*

*To achieve the aim for a fair sharing of responsibilities between Member States by relieving a Member State with a disproportionate burden and sharing that burden among the remaining Member States, this requires EU action. In addition, the proposal aims at ensuring the correct application of the Dublin system in times of crisis and at tackling secondary movements of third country nationals between Member States, issues which are cross-border by nature. It is clear that actions taken by individual Member States or taken bilaterally cannot satisfactorily reply to the need for a common EU approach to a common problem.*

*The Dublin System can therefore only be adopted and improved at a European level. The Commission is convinced that the proposal is necessary and proportionate to ensure a sustainable and fair Common European Asylum system and is in line with the principle of subsidiarity. The Commission is pleased to provide further clarifications in this regard in the attached annex.*

*The Commission agrees that the revision of the Dublin system is not the only measure that is needed to manage migration better, and that a wide range of measures are necessary and are being put in place to manage migration in particular in times of high migratory pressure. In that regard the Commission would like to point out that the proposals to reform the EU asylum policy, based on the principle of solidarity and fair sharing of responsibility, need to be seen in the context of wider EU migration policy, including a more effective protection of the external borders and more effective return policies. Significant efforts have been undertaken in that direction through the creation of the European Border and Coast Guard Agency.*

*On 15 December 2016, the European Council came to the conclusion that "The effective application of the principles of responsibility and solidarity remains a shared objective. Sustained efforts over the past months to review the Common European Asylum System have shown some areas of convergence, while other areas require further work. Building on this work, the Council is invited to continue the process with the aim of achieving consensus on the EU's asylum policy during the incoming Presidency." The Commission fully supports this objective.*

*The proposal is now subject to the ordinary legislative procedure for adoption by the European Parliament and the Council.*

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

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Dimitris Avramopoulos  
Member of the Commission*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Országgyűlés in its reasoned opinion and takes seriously the concerns expressed regarding the proposal's compliance with the principle of subsidiarity. The Commission is pleased to offer the following clarifications.*

*The current situation has revealed structural shortcomings in the Dublin system. The relocation decisions, which have been adopted by the Council in response to the crisis situation in Greece and Italy<sup>3</sup>, will be applied until September 2017. This is a temporary, ad hoc and emergency response to the situation in those two Member States which have experienced unprecedented flows of migrants and which should have been relieved of some of the burden. The Commission reports continuously on the implementation of these decisions, most recently in the eighth report on relocation and resettlement of 9 November 2016 {COM(2016) 791 final}.*

*In view of the highly uneven distribution of asylum applicants among Member States and the overall inefficiencies inherent in the Dublin system, the Commission came to the conclusion that the current Dublin system is no longer sustainable. The proposal for the recast of the Dublin Regulation addresses these structural shortcomings by proposing improvements, in particular by establishing a sustainable and fair system for determining the Member State responsible for asylum seekers. The basic principles of the Dublin Regulation and the criteria for determining the Member State responsible will remain the same, but the proposal aims at streamlining the Dublin procedures and establishing a new corrective allocation mechanism to deal with situations of disproportionate pressure on Member States' asylum system, but before a Member State is in crisis. For the functioning of this new mechanism it is necessary that clear rules apply in order to relieve the Member States under disproportionate pressure and ensure fair burden sharing between all Member States. Therefore, the corrective allocation mechanism is proposed to be automatically triggered once a Member State is at 150 % of its fair share, which will be determined on the basis of the size of the population and the total gross domestic product (GDP). Both criteria take into account the capacity of Member States insofar as they reflect the potential for integration and for providing the necessary resources.*

*As regards the legal base of the proposal, Article 78(2)(e) of the Treaty on the Functioning of the European Union (TFEU) provides that the European Parliament and the Council shall adopt measures for a common European asylum system comprising inter alia criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection. As the existing "Dublin III" Regulation (EU) 604/2013, the proposal for the recast of this Regulation is based on that provision. The*

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<sup>3</sup> Council Decision 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015.

*proposed allocation mechanism is one of the mechanisms to ensure the rapid determination of the Member State responsible in particular in the event of large-scale arrival of asylum seekers which would put an individual Member State under disproportionate pressure. The mechanism is therefore in line with the objective of the Regulation - as expressed in recital 5 both of the Dublin III Regulation and of the proposal - to make it possible to determine the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection. Article 78 has also to be read in conjunction with Article 80 TFEU, which provides that the policies of the Union including the policies on asylum shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.*

*The proposal envisages different means for Member States to show solidarity. Those Member States which choose not to participate in the allocation mechanism during a given year should instead contribute through other, financial, means. The chosen amount serves as a flexible option when a Member State is temporarily unable to participate in the corrective allocation mechanism. However, the amount of the solidarity contribution per applicant who would otherwise have been allocated to that Member State should cover the costs of receiving asylum seekers during a number of years. The calculation is based on the immediate costs for the reception of refugees, asylum seekers, as well as the longer-term costs for dealing with an asylum seeker who is granted asylum, such as cost for schools and medical facilities and housing. At the same time, there is also a dissuasive element since the aim of the proposal is the full participation of the Member States in the fairness mechanism. Given that two-fold objective, the amount set out in the provision on financial solidarity of the proposal is therefore not comparable with the lump sum set out in Council Decision (EU) 2015/1601 for the transfer of beneficiaries of international protection from another Member State. The modalities for the implementation of that provision shall be laid down by implementing acts on the basis of the ordinary procedure provided by Article 5 of Regulation (EU) No. 182/2011.*