



EUROPEAN COMMISSION

*Brussels, 08.03.2017
C(2017) 1568 final*

*Mr Pietro Grasso
President of the Senato della
Repubblica
Piazza Madama, 1
IT – 00186 ROMA*

Dear President,

The Commission would like to thank the Senato della Repubblica 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}.

This proposal forms part of the first package of legislative measures¹ that the Commission proposed on 4 May 2016 towards a sustainable and fair Common European Asylum System as well as to manage migration better.

The Commission regrets the conclusion of the Senato della Repubblica that the proposal does not achieve the objectives to prevent secondary movements and to share responsibility in a fair manner between the Member States. It therefore welcomes this opportunity to provide further clarifications of the contested points of its proposal and kindly refers the Senato della Repubblica to the attached annex.

The large-scale, uncontrolled arrival of migrants and asylum seekers in 2015 has exposed structural weaknesses in the design and implementation of the Common European Asylum System, in particular the Dublin arrangements. According to the current Dublin rules, the highest burden is on Member States of first irregular entry, and de facto in 2015, those few Member States carried the highest burden. This development showed clearly that solidarity between Member States cannot be solved by bilateral actions between Member States alone but requires action at Union level.

¹ COM(2016) 270_271_272 final.

In order to address the shortcomings inherent in the current Dublin system beyond mere short-term reactions, the European Union has been working since the adoption of the European Agenda on Migration in May 2015 to create a more sustainable and fair system for determining the Member State responsible for asylum seekers. The Commission proposal seeks to discourage abuses and prevent secondary movements ('asylum shopping') while ensuring the full respect of the overarching principle of solidarity and fair sharing of responsibility. According to the proposal, the basic principles of the Dublin Regulation and the criteria for determining the Member State responsible will remain the same while the Dublin procedures will be streamlined and a new corrective allocation mechanism will be established to deal with situations of disproportionate pressure on Member States' asylum system, before a Member State is in crisis.

Moreover, the Commission would like to point out that ensuring solidarity and a fair sharing of responsibilities between Member States is at the very core of the overall reform of the Common European Asylum System. In this context, the proposal transforming the European Asylum Support Office into a fully-fledged Agency is, for instance, a crucial step in that direction. According to the proposal, the new Agency should be able to intervene in support of a Member State, where in case of disproportionate pressure, the asylum and reception systems of a Member state are rendered ineffective to the extent of jeopardising the functioning of the Common European Asylum System.

This proposal is now subject to the ordinary legislative procedure for adoption by the European Parliament and the Council. In this context, the Commission would like to take this opportunity to remind that 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.

Hoping that these clarifications address the issues raised by the Senato della Repubblica, the Commission looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*

ANNEX

The Commission welcomes the inquiry which the Senato della Repubblica has carried out into this important subject. Whilst the Commission does not necessarily share all conclusions drawn in the report, the detailed work that the Senato della Repubblica has undertaken constitutes an important contribution to the debate that is now underway.

As regards the points to which the Senato della Repubblica has drawn the Commission's particular attention, the Commission would like to make the following comments grouped by topic.

Regarding the Senato della Repubblica's concerns that the measures proposed do not meet the needs and do not constitute a real reform, the Commission has the following views:

The proposed corrective allocation mechanism will ensure solidarity and a fair sharing of responsibilities between Member States, so that no Member State is left with a disproportionate pressure on its asylum system. The mechanism would automatically be triggered once a Member State reaches 150 % or more of its fair share, determined on the basis of each Member States' population size and total gross domestic product (GDP). The Commission opted for a simple distribution key based on the size of the population and the GDP in order to ensure that the capacity of a Member State to absorb a certain number of refugees and the absolute wealth of a country are reflected. The GDP is also indicative of the capacity of an economy to absorb and integrate refugees. Those Member States who choose not to participate in the allocation mechanism during a given year should instead contribute through other, financial, means. The amount of the solidarity contribution per applicant who would have been otherwise allocated to that Member State should, on the one hand, cover the costs of receiving asylum seekers during a number of years. On the other hand, there is also a dissuasive element, as the aim of the proposal is full participation of the Member States to the fairness mechanism.

As far as the issue of first-entry criterion is concerned, the current Dublin rules have proven not fully effective as they allow for a shift of responsibility and do not fully meet the objective of the Dublin system, namely to prevent secondary movement. In order to achieve the objectives of the proposal, the Commission considers it necessary to streamline responsibility criteria and to lay down the fundamental principle that these criteria are applied only once. The proposed "pre-Dublin check" regarding applicants, who are coming from a safe third country or a first country of asylum, serves to avoid transferring persons throughout the EU who are not in need of international protection and should therefore be returned. This is also the case for applicants from safe countries of origin. In essence, responsibility should not shift to another Member State once it has been established. However, the Commission agrees with the need for balance in order to relieve the Member States that are under pressure due to their geographical location. The Commission is of the opinion that this balance should be adjusted through the corrective allocation mechanism rather than through shifting of responsibility on a case by case basis.

As regards unaccompanied minors without family members present on the territory of the Member States, the current rule allows an unaccompanied minor to choose the Member State responsible and different interpretations have resulted in prolonged determination procedures for unaccompanied minors. The proposal clarifies that the Member State responsible should be the one where the minor lodged the first application for international protection, unless it is demonstrated that this is not in the best interest of the minor. The proposal ensures that the procedure for determining the Member State responsible is not unnecessarily prolonged and secures quick access to the asylum procedure for this vulnerable group of applicants.