



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senato della Repubblica for its Reasoned Opinion on the proposal for a Directive laying down standards for the reception of applicants for international protection (recast) {COM (2016) 465 final} and for its Opinions on the proposal for a common procedure for international protection in the Union and repealing Directive 2013/32/EU {COM(2016) 467 final} and the proposal on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents {COM(2016) 466 final}.

The Commission takes note of the concerns expressed by the Senato della Repubblica as regards the compliance of the Commission's proposal for a Directive laying down standards for the reception of applicants for international protection with the subsidiarity principle. The Commission would like to point out that the objective of the proposal is to harmonise the reception conditions in the EU not only in order to ensure equal and dignified reception standards and increased integration prospects for applicants throughout the EU, but also to ensure further and harmonised disincentives for secondary movements. In the Commission's view, this objective cannot be sufficiently achieved by Member States acting individually. Therefore, further EU action is needed to ensure a sufficient level of harmonisation to meet the stated objectives. In response to the more technical comments in the Reasoned Opinion, the Commission would like to refer the Senato della Repubblica to the attached annex.

Turning to the Senato della Repubblica's observations expressed in its two other Opinions, the Commission welcomes the Senato della Repubblica's favourable opinion on the Commission's proposal for a regulation establishing a common procedure for international protection. This proposal provides for the obligation to assess the admissibility of an application, to provide, as a rule, free legal assistance during the administrative and appeal procedures and sets strict but reasonable time limits for completing these procedures. The Commission considers that these new rules are necessary to meet the objectives of the reform, in particular of establishing a common procedure for international protection and of ensuring fast decision making but also safeguarding the procedural guarantees during all the stages of the procedure.

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In relation to the Senato della Repubblica's comment regarding the burden placed on Member States of first arrival, the Commission notes that the proposal for a new Dublin Regulation provides indeed for a preliminary examination by the Member State of first application on the inadmissibility on the grounds that the applicant comes from a first country of asylum or a safe third country. The reason is that for persons who are not in need of international protection in the EU – as they already received or could receive protection from a third country – it is considered not necessary to determine a Member State responsible, as such applicants should be returned to the third country in question. If an application is inadmissible on these grounds, the Member State which made the admissibility assessment shall be considered responsible. That application will then be counted for the share of that Member State under the Dublin system.

The Commission would like to underline that the current Dublin rules were not designed to ensure a fair sharing of responsibility across the EU. For that reason, the new proposal provides for a corrective allocation mechanism to deal with situations of disproportionate pressure on Member States' asylum systems, based on the principles of solidarity and fair sharing of responsibility. The suggested approach, according to which the responsibility criteria should be applied only once and the responsibility should not be shifted to another Member State once it is established, would provide legal clarity and make a significant contribution to the fight against secondary movements. This approach would, in return, be balanced through the corrective allocation mechanism, in order to relieve the Member States which are under pressure and mainly the Member States of first entrance. The mechanism would automatically be triggered once a Member State reaches levels at 150 % or more of its fair share, determined on the basis of each Member State's population size and total gross domestic product (GDP).

As regards the right to reside in another Member State than the one that granted protection, the Commission would like to recall that this is regulated by the Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. It applies to beneficiaries of international protection as third-country nationals residing legally in the territory of a Member State. In addition to that, the respect for family life is reflected and has been strengthened throughout the proposals for a reform of the Common European Asylum System. Thus, the definition of 'family member' in the proposed Dublin Regulation is extended to include siblings of the applicant in order to take the applicant's preferences into account when determining the Member State responsible and to reduce the risk of irregular movements.

As regards the promotion of safe and legal access to international protection, the Commission would like to draw the Senato della Repubblica's attention to the proposal for a Regulation establishing a Union Resettlement Framework. The Commission would also like to assure the Senato della Repubblica that the Commission will, in parallel to the discussions on the legislative proposals, continue monitoring the effective enforcement of the relevant current EU acquis in order to ensure compliance with EU principles of migratory flow management.

The views of the Senato della Repubblica have been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions. Discussions between the co-legislators concerning the proposals are now underway and the Commission remains hopeful that agreement will be reached on all proposals in the near future.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senato della Repubblica and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*

ANNEX

As regards the points to which the Senato della Repubblica has drawn the Commission's particular attention in its Reasoned Opinion on the proposal for a Directive laying down standards for the reception of applicants for international protection (recast) {COM(2016) 465 final}, the Commission would like to make the following comments:

Article 17a: The Commission takes good note of the Senato della Repubblica's proposal to exclude minors from the restriction of access to benefits referred to in Articles 14, 16 and 17. The Commission however believes that, in order to ensure an orderly management of migration flows, to facilitate the determination of the Member State responsible and to prevent secondary movements, it is essential that the applicants remain in the responsible Member State and do not abscond. The introduction of more targeted restrictions to the applicants' freedom of movement and strict consequences when such restrictions are not complied with are therefore necessary, including restrictions concerning the applicants' right to material reception conditions, schooling and education of minors as well as employment and vocational training. In view of the best interests of the child, such restrictions should however not limit the child's right to suitable educational activities pending the child's transfer back to the Member State responsible. Considering the limited time the minor is to stay in another Member State than the one responsible as well as the disproportionate burden on Member States to ensure access to the national education system during this period, the Commission deems it appropriate and proportionate to only ensure suitable educational activities pending the transfer of the minor. All applicants are also always entitled to health care and to a dignified standard of living, in accordance with the fundamental rights.

Article 19: The Commission takes good note of the Senato della Repubblica's proposal to specify what constitutes a dignified standard of living and whether the state bears the burden of providing not only health care but also accommodation, food and other benefits. The precise meaning of the term "dignified standard of living" is determined by international obligations, in particular by the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child and related jurisprudence. In this respect, the Commission would like to draw the Senato della Repubblica's attention to recital 32 of the proposal, which refers to the main elements of the relevant jurisprudence in a non-exhaustive manner, including the obligation of Member States to provide for the applicant's "subsistence and basic needs both in terms of physical safety and dignity and in terms of interpersonal relationships, with due regard to the inherent vulnerabilities of the person as applicant for international protection".

Article 15(1)(1): The Commission welcomes the Senato della Repubblica's support for a reduced time limit for applicants' access to the labour market. In the view of the Commission, the proposal takes into account the state of Member States' labour markets by maintaining the possibility for Member States to apply a labour market test, as long as the access to the labour market is overall effective.