



EUROPEAN COMMISSION

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*Ms Maria Elisabetta ALBERTI CASELLATI
President of the
Senato della Repubblica
Piazza Madama, 1
IT – 00186 ROME*

Dear President,

The Commission would like to thank the Senato della Repubblica for its Reasoned Opinion on the “Amended proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 A contribution from the European Commission to the Leaders’ meeting in Salzburg on 19-20 September 2018” {COM(2018) 633 final}.

This proposal is part of a series of legislative proposals, such as the proposals on the European Border and Coast Guard¹ and the Return Directive², from the Commission based on the principles of solidarity and responsibility and that aim at further strengthening the ability of the Union to provide Member States all the support they need to ensure an orderly management of migration flows. This proposal comprises targeted amendments to the provisional agreement reached by the co-legislators on the 28 June 2017 to ensure that the Agency can provide, at the request of a Member State, support at all stages of the procedure to assess an application for international protection, without prejudice to the competence of the Member States to take the decision on individual applications.

In addition, the Agency will be able to provide support in the procedure for determining the Member State responsible for examining an application for international protection. The proposal also foresees the ability of the Agency to assist Courts and Tribunals in the handling of appeals with full respect of the organisation of the judicial system in each Member State, as well as their judicial independence and impartiality.

This initiative should be dealt with in the context of inter-institutional negotiations on the proposal for a Regulation on the European Union Agency for Asylum and repealing

¹ COM(2018) 631 final.

² COM(2018) 634 final.

Regulation (EU) No 439/2010, which the Commission presented on 4 May 2016³ and on which a provisional agreement was found by the co-legislators in June 2017.

The Commission is pleased to note the appreciation of the Senato della Repubblica.

The Commission regrets that the Senato della Repubblica sees the principle of subsidiarity violated by the proposal and would like to highlight the following elements.

Both, the initial Commission proposal of 2016 and the subsequent political compromise reached in June 2017, are based on Article 78 (1) and (2) of the Treaty on the Functioning of the European Union. The same legal basis was retained for the amended proposal. The objectives of Articles 78 (1) and (2) of the Treaty on the Functioning of the European Union are the development of a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.

The objectives of the Commission proposal are to facilitate the implementation and improve the functioning of the Common European Asylum System, to strengthen practical cooperation and information exchange among Member States on asylum-related matters, to promote Union law and operational standards to ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, to monitor the operational and technical application of Union law and standards as regards asylum and to provide increased operational and technical support to Member States for the management of the asylum and reception systems, in particular to Member States subject to disproportionate pressure on their asylum and reception systems.

Since it is a common and shared interest to ensure the proper application of the legal framework on asylum, through concerted action among Member States with the support of the European Union Agency for Asylum, so as to consolidate stability and order in the functioning of the Common European Asylum System, the objectives of this proposal cannot be sufficiently achieved by the Member States alone and can be better achieved at the level of the Union. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

In this sense, Article 16.1 lists the different possibilities for the Agency to support Member States to achieve the above listed measures.

In the case of Article 16.1. (e), the Agency should itself be able to undertake an initiative in support of a Member State, where despite the disproportionate pressure, the Member State concerned does not request assistance from the Agency (under Art 16.1 (c)). In such cases, the agreement of the Member State is required.

In the case of Article 16.1 (f), which refers specifically to Article 22, the Agency may be required to intervene further to a Council decision in order provide assistance to a

³ COM(2016) 271 final

Member State in cases of a situation of disproportionate pressure or ineffectiveness of the asylum and reception systems. This is limited to situations where the asylum and reception systems of a Member State are rendered ineffective to the extent of having serious consequences for the functioning of the Common European Asylum System or where the Member States does not comply with the Commission Recommendation set out in the context of the monitoring exercise. In any case, it has to be highlighted that, according to the political compromise text of 27 June 2017, even in cases where Article 22 is activated via a Council implementing act, the details of the practical implementation of the said Council decision shall be contained in an operational plan that shall be agreed between the Executive Director of the Agency and the Member State concerned.

Therefore, in view of its objective and in accordance with the principle of proportionality, as set out in that Article 5 of the Treaty on European Union, this proposal does therefore not go beyond what is necessary in order to achieve those objectives. In addition, the issue of whether measures can be proposed at the initiative of the Agency (and after having sought the agreement of the Member State concerned) or by the Council through an implementing act as foreseen in Article 22, is not in contradiction to Article 78 (1) and (2) of the Treaty on the Functioning of the European Union but rather a means to ensure its full application.

In response to the more technical questions and comments in the Senato della Repubblica's Opinion, the Commission would like to refer to the attached annex.

Discussions between the Commission and the co-legislators, the European Parliament and the Council, concerning the proposal are now underway and the Commission remains hopeful that agreement will be reached in the shortest timeframe possible.

The Opinion of the Senato della Repubblica has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senato della Repubblica 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 the issues raised by the Senato della Repubblica in its Opinion and is pleased to offer the following additional clarifications:

With respect to the Senato della Repubblica's observations concerning perceived contradictions between Articles 16.1(e) and Articles 16.1(f), the Commission would further highlight that these provide for two different scenarios on the basis of which the Agency is to provide operational and technical assistance to Member States albeit in situations of disproportionate pressure (and for article 22 the "ineffectiveness of the asylum and reception system").

In the first scenario, addressed by Art. 16.1 (e), it is the Agency to propose, on its own initiative (and with the agreement of the Member State concerned), operational and technical assistance to Member State's whose asylum or reception systems are subject to disproportionate pressure. Should operational and technical assistance be triggered under this article, the operational plan is to be drawn up in line with the provisions of Article 18 (of the provisional political agreement of 28 June 2017).

The second scenario provided for in Article 16.1 (f), relates to the specific provision of Article 22 where such support can only be provided based on the Council implementing act. The modalities on the practical implementation of the said Council decision are to be found in Article 22 itself.

Given the fact that the said articles relate to two difference scenarios, the Commission sees no contradiction between the two articles.

Furthermore, Article 16.1 (e) does not relate either to Article 21 on the deployment of Migration Management Support Teams. The corresponding provision for the deployment of such teams in Article 16.1 are to be found in sub-paragraph (d). The only change introduced in the said Article 16.1 (d) from the political compromise text of 27 June 2017 is the deletion of the provision "subject to disproportionate pressure" to ensure that assistance provided to the Member States may be widened to situations other than disproportionate pressure.