



EUROPEAN COMMISSION

*Brussels, 15.12.2015
C(2015) 9357 final*

*Mr Stanisław KARCZEWSKI
Marshal of the Senat
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Dear President,

The Commission would like to thank the Senat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanism for determining the Member State responsible for examining an application of international protection lodged in one of the Member States by a third country national or a stateless person {COM(2015) 450 final}.

This proposal forms part of a broader package of ambitious measures that the Commission has proposed or will propose to respond to the current refugee crisis and to prepare for future challenges, in line with its European Agenda on Migration¹, including the temporary emergency relocation schemes from Italy and Greece that have been in the meantime adopted by the Council².

Moreover, the Commission has launched a study evaluating the Dublin system. This work as well as the experiences reached with the implementation of the temporary emergency relocation schemes will constitute the basis for the upcoming Commission proposal on the reform of the Dublin Regulation, announced by the Commission for March 2016.³

The Commission welcomes the Senat's broad support towards a joint action by all Member States to find adequate solutions to the current refugee and migratory crisis. Consultations between the Commission and the co-legislators concerning the proposal are now under way. The views expressed by the Senat are helpful and will be taken into account in the framework of further works on the Dublin reform.

¹ COM(2015) 240 final of 13 May 2015

² Council Decisions (EU) 2015/1523, of 14 September 2015, and 2015/1601, of 22 September 2015.

³ Communication to the European Parliament, the European Council and the Council Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, [COM(2015) 490 final/2], of 29 September 2015.

As regards the concerns expressed in the Opinion, the Commission The Commission welcomes the inquiry the Senat has carried out into this important subject, but does not share the conclusions drawn in the Opinion, notably that the Commission's proposal is based on a wrong legal basis.

The Commission has carefully considered the issues raised by the Senat in its Opinion and would like to offer additional observations as set out in the Annex).

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senat 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

Legal basis

In so far as this proposal amends Regulation (EU) No 604/2013, it should accordingly be adopted on the same legal basis, namely Article 78, second paragraph, point (e) of the TFEU, in accordance with the ordinary legislative procedure.

The overall objective of this legislative proposal is to ensure that the Union has at its disposal a robust crisis relocation mechanism to structurally deal with situations of crisis in the asylum area in an effective manner. In crisis situations jeopardising the application of Regulation (EU) No 604/2013 due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons in a certain Member State, of such a magnitude as to place extreme demands on its asylum system, the Commission would be empowered to apply the crisis relocation mechanism for the benefit of this Member State by means of a delegated act. The Commission delegated act would determine the specific conditions for the mechanism's application, inter alia the number of persons to be relocated and their distribution in accordance with the proposed distribution key. Therefore, whereas the application of the crisis relocation mechanism to a specific situation would remain temporary, the proposal itself aims to introduce in Regulation (EU) No 604/2013 a permanent framework making its implementation possible.

As it follows, the proposal establishing a crisis relocation mechanism has to be distinguished from the proposals of the Commission on the basis of Article 78(3) TFEU for the benefit of certain Member States confronted with a sudden inflow of third-country nationals on their territories. While the measures proposed by the Commission on the basis of Article 78(3) TFEU are provisional, the proposal establishing a crisis relocation mechanism empowers the Commission to apply by means of delegated acts derogations from the rules set out in Regulation (EU) No 604/2013 for determining the Member State responsible for examining an application for international protection. In well-prescribed crisis situations, the mandatory distribution key for determining responsibility for examining applications will be applied instead of these rules.

Furthermore, the proposal for a crisis relocation mechanism under Article 78(2)(e) is in any case without prejudice to the possibility for the Council to adopt in the future, based on a proposal from the Commission, emergency measures based on Article 78(3). The adoption of such emergency measures based on Article 78(3) will remain relevant in other types of exceptional circumstances characterised by a sudden inflow of nationals of third countries, where the conditions for applying the permanent crisis mechanism may not be met, but where an emergency response, encompassing possibly wider migratory support, is nevertheless needed.