



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senat for its reasoned Opinion of 21 October 2016 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} as well as for the Opinions of 28 September 2016 on the same proposal and on the Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 {COM(2016) 271 final}.

The Commission is pleased that the Senat shares the Commission's view that action at the EU level is needed to find a solution to the European migration crisis and that the proposal for a new Dublin Regulation simplifies and accelerates the procedures as well as increases sanctions for uncooperative migrants.

The Commission takes seriously the concerns expressed by the Senat as regards the proposal's compliance with the subsidiarity principle. In our view, the large-scale, uncontrolled arrival of migrants and asylum seekers in 2015 has exposed structural weaknesses in the design and implementation of the Dublin arrangements. According to the current Dublin rules, the highest burden is on Member States of first irregular entry, and in 2015 we saw this in practice. The reality has demonstrated that solidarity between Member States cannot be solved by bilateral actions between Member States alone but requires action at Union level.

In order to address the uneven distribution of asylum applicants among Member States and the overall shortcomings inherent in the Dublin system beyond mere short-term reactions in times of crisis, the proposal for the recast of the Dublin Regulation proposes improvements by establishing a more sustainable and fair system for determining the Member State responsible for asylum seekers in full respect of the overarching principle of solidarity and fair sharing of responsibility. According to the proposal, the basic approach of the Dublin Regulation that the Member State of first irregular entry is responsible will remain while the Dublin

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procedures will be streamlined to discourage abuses and prevent secondary movements ('asylum shopping'). The corrective allocation mechanism will only be triggered in situations of disproportionate pressure on Member States' asylum system, to keep the situation under control and avoid uncontrolled secondary movements within Europe.

The Commission is convinced that this approach is necessary and proportionate to ensure the effectiveness of the Dublin system and fair sharing of responsibility, which cannot be achieved on national level, and is therefore in line with the principle of subsidiarity. The proposals to reform the EU common asylum policy shall be seen as one element of a comprehensive EU migration policy that also includes actions to protect more effectively the EU external borders, to reinforce our return policy and to strengthen our cooperation with third countries.

Furthermore, the Commission welcomes that the Senat in principle supports the proposal for a European Union Agency for Asylum and repealing Regulation (EU) No 439/2010. The aim of this proposal is to strengthen the role of the European Asylum Support Office, transforming it into a fully-fledged Agency capable of providing the necessary operational and technical assistance to Member States.

The Commission welcomes this opportunity to provide further clarifications of the other contested points of the two proposals and kindly refers the Senat to the attached annex. Hoping that these clarifications address the issues raised by the Senat, the Commission looks forward to continuing our political dialogue in the future.

These proposals are now subject to the ordinary legislative procedure for adoption by the European Parliament and the Council. 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." In line with these conclusions, the European Council has requested the Maltese Presidency to initiate intensive bilateral discussions with Member States with the view to achieving convergence on the key elements of revision of the Dublin Regulation by the end of its term. The Commission supports this objective.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

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Member of the Commission*

ANNEX

Reference key to trigger the corrective allocation mechanism

The Commission notes the Senat's reservations relating to the reference key necessary to trigger the corrective allocation mechanism. 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. Moreover, Member States receive financial support under the Asylum, Migration and Integration Fund (AMIF) to develop their capacities to host and integrate refugees.

Solidarity: Financial contribution

As regards the Senat's concerns on financial solidarity, the Commission points out that this constitutes a different means for Member States to show solidarity in line with article 80 of the Treaty on the Functioning of the European Union. As indicated in the proposal, 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, since the aim of the proposal is the full participation of the Member States to the fairness mechanism. In addition, the solidarity contribution can only be reviewed after the twelve-month period in order to reflect in full the factual situation of the given year.

European Asylum Agency

The Commission takes note of the Senat's view that interventions by the Agency in a Member State facing disproportionate pressure should not take place without that Member States' agreement. The Commission considers that the Agency should be able to intervene in support of a Member State, in case of disproportionate migratory pressure. Such an intervention would take place on the basis of a Commission implementing decision outlining the measures to be taken by the Agency in support of the Member State concerned. The cooperation of that Member State with the Agency is necessary for the practical execution of the measures identified in the Commission implementing decision.