



EUROPEAN COMMISSION

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*Mr Luis CAPOULAS SANTOS
Chair of the European Affairs Committee
of the Assembleia da República
Palácio de S. Bento
P – 1249-068 LISBOA*

*cc. Mr Eduardo FERRO RODRIGUES
President
of the Assembleia da República
Palácio de S. Bento
P – 1249-068 LISBOA*

Dear Chair,

The Commission would like to thank the Assembleia da República for its Opinions on the five draft Regulations of the European Parliament and of the Council forming the Asylum and Migration Pact {COM(2020) 610-611-612-613-614 final}¹.

The New Pact on Migration and Asylum addresses all the elements for a comprehensive European approach to migration. It sets out improved and faster procedures throughout the asylum and migration system and balances the principles of fair sharing of responsibility and solidarity. This is crucial for rebuilding trust between Member States and confidence in the capacity of the European Union to manage migration.

The Commission would like to address the comments expressed by the Assembleia da República in its opinions as follows.

¹ Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] {COM(2020) 610 final}; amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU {COM(2020) 611 final}, the proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 {COM(2020) 612 final}; proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum {COM(2020) 613 final}; amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818 {COM(2020) 614 final}.

As stated in the Commission Staff Working Document accompanying the proposal on a regulation on Asylum and Migration Management², since the migration crisis of 2015 the number of arrivals and composition of flows has changed significantly and the share of migrants from countries whose nationals have a low chance of being granted international protection have increased. The EU-wide first instance recognition rate fell from 56% in 2016 to 30% at the end of 2019. The amended proposal for an Asylum Procedure Regulation aims to address this reality through provisions identifying the cases where the border procedure should be mandatory and ensuring a seamless link with screening and return.

In this context, the Commission proposed a mandatory application of the border procedure in three well-defined cases, based on objective criteria that can be easily assessed from the outset. These cases concern persons who are likely not in need of international protection (applicants coming from a country for which the EU average recognition rate is 20% or lower). This is accompanied by a system of exceptions meant to protect the most vulnerable and by all the safeguards and guarantees applicable to any asylum procedure, set out in the Commission's 2016 proposal. However, an application processed in the border procedure does not mean an automatic rejection; such an application will entail a full individual assessment, as set out in the Qualification Regulation. Should the asylum application be rejected, the person will be fully entitled to an effective remedy in front of the competent national court or tribunal, as defined by national legislation.

The Commission welcomes the position of the Assembleia da República acknowledging the need to establish a pre-entry phase of screening to contribute to the new migration realities by ensuring that the identity of persons, and health and security risks are determined quickly. The Assembleia da República raises concerns that a rapid screening procedure may not be compliant with fundamental rights and has doubts about the applicable legal framework. The screening is not a separate procedure but a pre-entry phase at the end of which persons are swiftly referred to the appropriate procedure, be it either the asylum or the return procedure where all safeguards and rights of appeals are guaranteed.

The proposed screening is a mere information-gathering stage which complements the checks at the external border crossing point and which does not entail any decision affecting the rights of the person concerned. Therefore, no judicial review is provided for the outcome of the screening as such. Once the screening ends, the person either enters the return or asylum procedure which will lead to decisions subject to judicial review, or receives a refusal of entry, which can also be contested before a judicial authority.

The Commission fully subscribes to the Assembleia da República's statement that fundamental rights must fully be observed and confirms that the proposals put a specific emphasis on the full respect of fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and the obligations stemming from international law, in particular from the Geneva Convention on the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the

² SWD(2020) 207 final

International Covenant for Civil and Political Rights and the United Nations Convention against Torture. In order to ensure that the fundamental rights are complied with in relation to the screening, Article 7 of the proposal contains a unique feature, namely an obligation on the Member States to establish an independent monitoring mechanism, covering the respect of fundamental rights at all times during the screening, including the respect of the applicable national rules in the case of detention.

The Commission highlights that the crisis proposal is meant to facilitate Member States' management of crisis situations and situations of force majeure. To that end, the proposal introduces specific rules on the application of the solidarity mechanism set out in the Regulation on Asylum and Migration Management with a view to addressing crisis situations due to a mass influx of persons structurally and achieving a fair sharing of responsibilities between Member States. The proposal also includes provisions related to crisis situations which allow for certain derogations from the proposed Asylum Procedures Regulation and the Return Directive.

The objective is to facilitate the enforcement of such procedures in situations of crisis, when specific adjustments are needed to allow the competent authorities under strain to exercise their tasks diligently and cope with extraordinary workload. Ultimately, the responsibility for the management of the crisis situation remains with the national competent authorities.

Regarding the issue of the establishment of legal routes for migrants to the EU, the Commission highlights that due to its specific focus, the proposal on screening of third country nationals at the external borders does not address legal pathways for migrants to the EU. It is, however, embedded in the broader context of a holistic European approach to migration and asylum as most recently set out in the Communication on a New Pact on Migration and Asylum. The approach outlined in the New Pact promotes legal pathways to the EU, both economic and humanitarian. The negotiations on the Proposal on the EU Blue Card aiming at attracting high skilled workers who are needed on EU labour markets should be concluded rapidly. Equally, the Pact announced that the Commission would propose by the end of 2021 a Skills and talent package, including legislative proposals as well as practical tools to facilitate the admission of workers of different skills levels to the EU, and intra-EU mobility of third-country workers already in the EU. and to develop EU Talent Partnerships providing a comprehensive policy framework for mutually beneficial cooperation with key partner countries to facilitate legal migration and mobility.

The Recommendation on legal pathways to protection in the EU aims at promoting resettlement, humanitarian admission and other complementary pathways for those in need of international protection.

As regards the obligation to collect the biometric data as a mandatory step in the asylum procedure, this is an element that already exists under the current asylum acquis. The text of the proposal for a Regulation on Eurodac put forward in 2016, as provisionally agreed by the European Parliament and the Council, contains all the necessary provisions aimed at ensuring the data protection of persons whose biometric data are registered.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Ylva Johansson
Member of the Commission*