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President of the
Camera Deputaților
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Dear President,

The Commission would like to thank the Camera Deputaților for its Reasoned 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 and will propose to respond to the current refugee crisis and to prepare for future challenges, in line with its European Agenda on Migration¹. The Commission welcomes the Camera Deputaților's broad support towards other EU measures that aim to address the migration crisis, namely through the strengthened control of the EU external borders, the fully operational hotspots, the cooperation with third-countries and the humanitarian aid to the most affected regions.

The Commission is currently undertaking a comprehensive review of the Dublin system, by conducting an evidence-based review covering the legal, economic and social effects of the 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 spring 2016. In addition, the Commission is currently assessing the need for a more comprehensive reform of the Common European Asylum System with a view to ensuring full convergence in the asylum policy across the EU.

¹ COM(2015) 240 final

The Commission welcomes the Camera Deputaților's broad support for a joint action by all Member States to find adequate solutions to the current refugee and migratory crisis.

The views expressed by the Camera Deputaților are very helpful and will be taken into account in the framework of further works on the Dublin reform. Consultations between the Commission and stakeholders, including the co-legislators, concerning the upcoming proposal on the Dublin reform have already started.

As regards the concerns expressed in the Reasoned Opinion, the Commission is pleased to provide a number of clarifications on the more technical comments in the attached Annex. The Commission welcomes the inquiry the Camera Deputaților has carried out into this important subject, but does not share the conclusions drawn in the Reasoned Opinion, notably that the Commission's proposal is based on a wrong legal basis and is not in line with the principles of subsidiarity and proportionality. The Annex provides for more detailed explanations on the choice of the different criteria and components of the proposed crisis relocation mechanism.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Camera Deputaților 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) 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 proposal foresees a permanent mechanism but which would only be activated on a well-defined basis, when the criteria set out therein will be met. 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.

Article 222 TFEU relates to cases where "a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster" whereas the Articles relevant for the issue at stake are Article 78 and more specifically Article 78(2)(e) TFEU and Article 80 TFEU, on the principle of solidarity and fair sharing of responsibility between the Member States in the field of border checks, asylum and immigration.

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) TFEU is in any case without prejudice to the possibility for the Council to adopt in the future, based on a proposal from the Commission's, emergency measures based on Article 78(3) TFEU. The adoption of such emergency measures based on Article 78(3) TFEU 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 crisis relocation mechanism may not be met, but where an emergency response, encompassing possibly wider migratory support, is nevertheless needed.

The Commission would like to underline that this proposal is a follow-up to the European Agenda on Migration on which all interested parties were widely consulted. Other EU institutions and key actors have already expressed their broad views on this topic. In its 23 April 2015 statement, the European Council committed to consider options for organising emergency relocation between all Member States on a voluntary basis. In the context of the discussion on the European Agenda on Migration, the European Parliament (plenary session of 19 May 2015) and the Council (15 June 2015) also exchanged views on the relocation mechanism. In its report, the LIBE Committee of the European Parliament has called upon the Commission to make a proposal for a permanent relocation scheme, to be adopted in accordance with the ordinary legislative procedure. UNHCR and representatives of civil society called the EU to commit to more intra-EU solidarity tools and to ensure a fairer distribution system of applicants for international protection. Under the proposal, the Commission, when preparing and drawing up delegated acts, is also obliged to ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Interplay with Directive 2001/55 on temporary protection

The Commission is currently not considering the activation of the temporary protection mechanism under Directive 2001/55/EC (hereafter the "Temporary Protection Directive"). To address the current refugee crisis the Commission has taken a series of other measures, set out in the Communication on 'Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration',² of 23 September 2015, and notably, the Council, on proposals from the Commission, adopted Decisions (EU) 2015/ 1523 of 14 September 2015, and (EU) 2015/1601 of 22 September 2015, allowing for the relocation of a total of 160,000 applicants for international protection from Italy and Greece.

Contrary to the Temporary Protection Directive, these temporary measures ensure a clear framework for the sharing of efforts between Member States in responding to the crisis, while preserving access for applicants to regular asylum status determination procedures under standards set out in Directive 2013/32/EU (Asylum Procedures Directive) of 26 June 2013, and in line with the standards for their reception applicable under Directive 2013/33/EU (Reception Conditions Directive) of 26 June 2013.

Distribution key

The distribution key contained in the proposal for a Regulation establishing a crisis relocation mechanism is based on: a) the size of the population of the Member State of relocation (40% weighting); b) total GDP of the Member State of relocation (40% weighting); c) average number of asylum applications in the Member State of relocation per one million inhabitants over the period 2010-2014 (10% weighting, with a 30% cap of the

² COM (2015) 490.

population and GDP effect on the key); and d) unemployment rate (10% weighting, with a 30% cap of the population and GDP effect on the key).

The criteria referring to the size of the population and to the GDP reflect the capacity of a Member State to absorb and integrate a certain number of beneficiaries of international protection. Reference to GDP per capita is unnecessary, as considerations per capita are already reflected in the criteria on the size of the population. The remaining two factors are of a merely corrective nature and hence they are directed at avoiding disproportionate effects on the overall distribution of the first two criteria, amounting to 80% of the distribution key. These criteria on past efforts in the asylum field by the Member State of relocation and on the unemployment rate reflect respectively the existing burden on a Member State in terms of asylum applications and the capacity to integrate beneficiaries of international protection. Finally, the distribution key takes into account the fact that the Member States from which relocation will take place should not themselves contribute as a Member State of relocation.

Therefore, through this elaborate formulation, the distribution key pays due consideration to the sensitivities and national particularities of the Member States.

Variable geometry

The proposal takes into account the arrangements applicable to the United Kingdom, Ireland and Denmark under Protocols 21 and 22 annexed to the Treaties as well as the fact that Denmark applies the current Dublin Regulation on the basis of an international agreement that it concluded with the European Community in 2006. It can therefore not be argued that these Member States' commitment towards the mechanism is arbitrary.

National security concerns, registration and operational support from EASO

In the Commission's proposal, annex IV, it is clearly stated that "Member States shall have the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Article 12 and 17 of Directive 2011/95/EU". This is also explicitly supported in the Explanatory Memorandum accompanying the proposal ('Description of the crisis relocation mechanism').

Further, the proposal specifies that applicants whose fingerprints are required to be taken pursuant to the obligations set out in Article 9 of Regulation (EU) No 603/2013 of 26 June 2013, may not be relocated unless their fingerprints have been taken and transmitted to the central system of Eurodac. It follows that fingerprinting of applicants of international protection and registration of fingerprints into the Eurodac system are compulsory preconditions for having access to the relocation scheme. This serves equally to prevent abuses of the mechanism, in case a relocated applicant would subsequently try to register in a second Member State other than his or her Member State of relocation. The paramount relevance of registration and fingerprinting was similarly stressed by President Juncker in his State of the Union speech of 9 September 2015. The Commission has provided guidance to Member States to facilitate systematic fingerprinting in full respect of fundamental rights, guidance which have been endorsed by the Council in July 2015.

The first and second implementation packages of the European Agenda on Migration have already shown committed advancement towards a closer administrative cooperation between Member States. Beyond current support to the asylum systems of Italy and Greece, under Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015 and the proposal for a Regulation establishing a crisis relocation mechanism, the European Asylum Support Office (EASO), together with other agencies and in line with the "hotspot" approach, is to coordinate and to provide operational support to Member States throughout the whole process of relocation schemes, from the arrival of third-country nationals on the territory of Italy or Greece until the completion of all applicable procedures.

Case where a Member State, in exceptional circumstances, may be temporarily unable to take part in the relocation scheme

The Commission proposal envisages the scenario where a Member State, in exceptional circumstances, may be temporarily unable to take part in the relocation scheme. In this case, the Commission is to assess the reasons advanced by the Member State in question and, in particular, to check their compatibility with the fundamental values of the EU, as enshrined in Article 2 of the TEU. Member States may notify the Commission within one month of the entry into force of the delegated act activating the mechanism. Where the Commission finds these grounds are indeed duly justified, the Member State would be freed, for a period of one year, from its obligation to take part in the relocation of applicants. Instead, the Member State would make a financial contribution to the EU budget of an amount of 0,002% of its GDP, to be used to finance assistance supporting the efforts undertaken by all Member States and the consequences of the non-participation of the Member State concerned.

This arrangement would be accompanied by a Commission measure consequently redistributing the allocations under the distribution key that were originally foreseen for each Member State. It is thereby to be ensured that the level of solidarity with the Member State under particular pressure, in terms of the number of persons to be relocated, remained unaffected.

Suspension of the mechanism for Member States benefitting from relocation

Reflecting the dual principles of solidarity and responsibility, the proposal sets out the obligation for the Member State benefitting from relocation to present to the Commission, on the date of entry into force of the delegated act, a roadmap with measures to ensure appropriate implementation of the crisis relocation mechanism. Where a Member State has been called upon by the Commission to draw up a crisis management action plan pursuant to Article 33(3) of Regulation (EU) No 604/2013, the measures aimed to ensure an appropriate implementation of the relocation mechanism shall be presented as part of that action plan, which should include wider asylum-related measures aimed at, inter alia, strengthening the capacity of its asylum system.

The proposal foresees that the Commission is empowered to adopt a delegated act to suspend the application of the crisis relocation mechanism for the benefit of a Member State where it does not comply with the obligations above mentioned. The Commission will first give the

Member State concerned the opportunity to present its views, and such suspension will not affect the transfers of applicants that are pending following approval of the Member State of relocation.

The Commission attaches great importance to the commitment of Member States benefitting from relocation towards the programming and implementation of the roadmaps. Such actions are an indispensable component of the principle of solidarity and responsibility-sharing on which the proposal in question is based.

Unaccompanied minors

The proposal for a crisis relocation mechanism also aims to protect the rights of the child, in line with Article 24 of the Charter, and the right to family unity, in line with Article 7 of the Charter. Therefore, when deciding which applicants in clear need of international protection should be relocated from the Member State benefitting from relocation, priority should be given to vulnerable applicants within the meaning of Article 21 and 22 of the Reception Conditions Directive 2013/33/EU and, in particular, the best interests of the child should always be a primary consideration. In fact, the obligation to give primary consideration to the best interests of the child as laid down by Regulation (EU) No 604/2013 remains applicable when deciding the Member State of relocation. This implies inter alia the obligation for a Member State benefitting from relocation to indicate to the other Member States when the applicant to be relocated is an unaccompanied minor and, together with the Member State of relocation, to ensure that before relocation takes place, an assessment of the best interests of the child is carried out.

Also on this issue, the Commission will draw lessons from the ongoing evaluation of its previous Action Plan on Unaccompanied Minors (2010-2014).