



EUROPEAN COMMISSION

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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 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}. The Commission takes seriously the concerns expressed by the Camera Deputaților as regards the compliance of this proposal with the principle of subsidiarity and proportionality.

In the Commission's view, the large-scale, uncontrolled arrival of migrants and asylum seekers in 2015 has exposed structural weaknesses in the design and implementation of the Common European Asylum System and in particular of the Dublin arrangements. According to the current Dublin rules, the highest burden is on Member States of first irregular entry, and de facto in 2015, those few Member States carried the highest burden. This development 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 highly 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 presents improvements by establishing a more sustainable and fair system for determining the Member State responsible for asylum seekers in full respect of the overarching principles of solidarity and shared responsibility. In the Commission's view, the temporary nature of the emergency measures under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU) would not allow to provide an adequate response to the current migration situation.

According to the proposal, the basic principle of the Dublin Regulation that the Member State of first irregular entry is responsible will remain while the Dublin procedures will be streamlined to discourage abuses and prevent secondary movements ('asylum shopping'). The

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corrective allocation mechanism will only be triggered in situations of disproportionate pressure on Member States' asylum system, when it is at 150 % of its fair share, which will be determined on the basis of the size of the population and the total gross domestic product (GDP). Both criteria take into account the capacity of Member States and their economic and social situation insofar as they reflect the potential for integration and for providing the necessary resources. The Commission is convinced that this approach is necessary and proportionate to ensure the effectiveness of the Dublin system and a fair sharing of responsibility, which cannot be achieved on national level, and is therefore in line with the principle of subsidiarity and proportionality.

As regards the concern on the financial solidarity mechanism, the Commission points out that this constitutes a different means for Member States to show solidarity, in line with article 80 of TFEU. 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, as the aim of the proposal is full participation of the Member States to the fairness mechanism.

The Commission takes note of the view of the Camera Deputaților that the proposed rules are insufficient to address the migration crisis, and further work should be conducted to find a solution based on a wider range of tools to deal with the migration crisis. In that regard the Commission would like to point out that the proposals to reform the EU asylum policy need to be seen in the context of wider reforms to the EU migration policy, including a more effective protection of the external borders and more effective return policies. Significant efforts have been undertaken in that direction through the creation of the European Border and Coast Guard Agency.

In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex.

Hoping that these clarifications address the issues raised by the Camera Deputaților, the Commission looks forward to continuing our political dialogue in the future. This proposal is 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 the 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.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*

ANNEX

The Commission has carefully considered each of the issues raised by the Camera Deputaților and takes seriously the concerns expressed regarding the respect of the principle of subsidiarity. The Commission is pleased to offer the following clarifications.

In reply to the concerns expressed by the Camera Deputaților as regards the absence of an impact study, the Commission would like to stress that in the context of the preparation of the proposal it commissioned external studies on the evaluation of the Dublin system.¹ The evaluation assessed the effectiveness, efficiency, relevance, consistency and EU added value of the Dublin III Regulation. It examined the extent to which the Regulation addressed its objectives, the wider policy needs of the EU and the needs of the target stakeholders. The evaluation was based on desk research, quantitative analysis and consultations with Member States' legal/policy advisors. The evaluation included an in-depth study on the practical implementation of the Dublin III Regulation in the Member States. In this context, a broad range of stakeholders were consulted, including Dublin units in national asylum administrations, legal/policy advisors, NGOs, lawyers/legal representatives, appeal and review authorities, law enforcement authorities, detention authorities, applicants and/or beneficiaries of international protection. The main findings of that evaluation are summarised in the explanatory memorandum to the proposal. In addition to the external evaluation, the Commission concluded targeted consultations with the coordinators of political groups of the European Parliament's Committee on Civil Liberties, Justice and Home affairs, with Member States and other stakeholders.

As regards the Camera Deputaților's view that the Commission should have proposed emergency measures under Article 78(3) TFEU, rather than a new structural allocation system, the Commission would like to stress that such temporary measures are not an adequate response to the current migration situation. The large-scale, uncontrolled arrival of migrants and asylum seekers in 2015 has exposed weaknesses in the design and implementation of the Common European Asylum System, and of the 'Dublin' arrangements in particular. The relocation decisions which have been adopted by the Council in response to the crisis situation in Greece and Italy² will be applied until September 2017. This is a temporary, ad hoc and emergency response to the situation in those two Member States which have experienced unprecedented flows of migrants. Those two Member States should have been relieved of some of the burden in that the responsibility for certain asylum claimants is transferred from Italy and Greece to other Member States. The Commission reports continuously on the implementation of these decisions, most recently in the eighth report on relocation and resettlement of 8 December 2016 {COM(2016) 791 final}.

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¹ Evaluation and implementation reports available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm

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

For the mechanism to function, clear rules must apply in order to relieve the Member States under disproportionate pressure and ensure fair burden sharing between EU countries. Therefore, the corrective allocation mechanism is proposed to be automatically triggered once a Member State is at 150 % of its fair share, which will be determined on the basis of the size of the population and the total gross domestic product (GDP).

As regards the conclusion that that the proposed corrective allocation mechanism would not be an adequate response to migratory pressure, the Commission is aware that the allocation mechanism is only one, but an important element towards a more efficient management of migration, and that a wide range of measures is necessary to manage migration in particular in times of high pressure. In this regard, an accelerated operational delivery of the European Border and Coast Guard is a key issue. However, a third-country national asking for international protection on a Member State's territory cannot be refused access to relevant Member State procedures in accordance with the Union asylum acquis. As regards the reference to migrants from safe third countries, the Commission would like to draw the attention of the Camera Deputaților to the proposed pre-Dublin check, which includes in particular that applications of applicants from countries designated as safe countries in an EU common list shall be examined in the first Member State in which the application was lodged, so that in such cases no transfer or allocation will take place to other Member States. The Commission is aware that certain judicial systems have to adapt to the proposed deadlines for remedies against transfer decisions; however, uniform deadlines are necessary also in that respect to ensure an effective functioning of the Dublin system.

The proposed corrective mechanism is accompanied by a fundamental change in the new Dublin rules, namely the new concept of continued responsibility. Where a Member State has been determined as responsible for examining the application of a given applicant for international protection, it will remain so, without the possibility for a shift of responsibility to another Member State, including for subsequent applications. This approach, combined with the new obligation to apply in the Member State of first irregular entry and procedural consequences in case of non-compliance will do away with incentives to circumvent the rules and thus prevent secondary movements. Moreover, the extension of the definition of family members will also reduce the risk of irregular movements, since this will do away with the reason for some applicants to illegally move to another Member State in order to follow siblings or members of a family formed after leaving the country of origin.