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*Mr Călin POPESCU-
TĂRICEANU
President of the Senat
Calea 13 Septembrie nr. 1-3,
sector 5
RO – 050711 BUCHAREST*

Dear President,

The Commission would like to thank the Senat for its 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 Senat as regards the proposal's compliance with the principle of 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 of the Dublin arrangements in particular. 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 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 principles of solidarity and shared responsibility

The Commission would like to stress that Regulation (EU) No 604/2013 does not provide, in its current form, for tools enabling sufficient responses to situations of disproportionate pressure on Member States' asylum systems. The provisions on the corrective allocation mechanism that the proposal introduces seek to address this gap. In this context, these provisions do not go beyond what is necessary to achieve the objective of addressing the situation effectively and are in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU). In the Commission's view, the temporary nature of the emergency measures under Article 78(3) TFEU would not allow the Commission 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 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. Moreover, Member States receive substantial financial support to increase their reception and integration capacities.

As far as the financial solidarity is concerned, the Commission would like to draw the Senat's attention on the overall objective of this proposal that is to rebuild the Dublin system on the principle of solidarity and the full participation of the Member States to the fairness mechanism. According to Article 80 of TFEU, the policies of the Union shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications between the Member States. 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 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. 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 stays ready to support this objective. In that process common grounds for managing the challenges of asylum and migration as a Union will need to be found.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*