The Vice-President of the European Commission
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COURTESY TRANSLATION

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subject: Directive on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009) 554) and the proposal for a Directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM (2009) 551).
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The Senate has taken note with interest of the proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009) 554; referred to below as the Procedures Directive) and the proposal for a Directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM (2009) 551; referred to below as the Qualification Directive). In this letter it would like to put a number of questions about these proposals to the Commission. The members of the parliamentary party of the VVD (People's Party for Freedom and Democracy) have decided that these questions do not have their support.

The Senate takes a positive view of the aim of creating a common asylum system and regards the proposals for the recasting of the Procedures Directive and the Qualification Directive as necessary steps towards this end. Nonetheless, the Senate would like to learn from the Commission how it thinks it can create a common asylum system by 2014, as the proposals will probably not achieve this ultimate objective. In addition, the Senate has a few questions about specific provisions or proposals, some of which are raised in order to be better able to review Dutch policy for compliance with the Directives.

Qualification Directive (COM (2009) 551)

The Commission has decided not to amend Article 5. Nonetheless, questions arise in legal practice about the scope and applicability of paragraph 3, which gives Member States the possibility of not providing asylum seekers with protection if the risk of persecution is based on circumstances which the refugee has created by his own decision since leaving the country of origin. Application of this paragraph may mean that refugees 'sur place' are not protected from refoulement, for example because they have openly professed their Christian faith or acknowledged their homosexuality since fleeing their country of origin. Does not the Commission regard this as a reason for amending this paragraph?

The failed negotiations on the Commission's proposal to arrange for refugees and persons granted a subsidiary form of protection to come within the scope of the Long-Term Residence Status (LTR Status) Directive mean that EU law does not confer on this group a right to long-term residence in the Member States. Paragraph 1 of Article 14 and paragraph 1 of Article 19 of the Qualification Directive oblige Member States to revoke the refugee status if the ground for protection has ceased to exist, regardless of the long duration of their stay in the Member State concerned. Does the Commission see a possibility of obliging the Member States to weigh the different interests before deciding to revoke a right of residence of protected

persons who have been in the Member State for many years?

The judgment of the Court of Justice in the Elgafaji case (ECJ 17 February 2009, case no. C-465/07) has clearly shown that for the purposes of Article 15(c) the extent to which a threat to life or person exists where an individual is not specifically targeted is dependent on the degree of indiscriminate violence. Does the Commission consider that on the basis of this interpretation additional group protection is no longer necessary in the event of large-scale violence (war)? At present, there is a danger that national forms of protection will be ended owing to the wide disparities between the national systems. Does the Commission believe that it would therefore be desirable to harmonise group protection or in any event to provide an overview of the different national protection models?

Does the Commission consider that it is possible under Article 23 to grant a family member whose nationality differs from that of the person with refugee or subsidiary protection status a less strong residence status than another family member who has the same nationality as the person with refugee or subsidiary protection status, even if the family cannot settle in the country of the other nationality of the family member?

Procedures Directive (COM(2009) 554)

Do Articles 8 and 35 in conjunction with Article 41 mean that a decision not to allow an asylum seeker to remain in the Member State pending the examination of his application must be checked by the determining authorities to ensure compliance with the principle of non-refoulement, but may not be reviewed by a court prior to the expulsion? If so, how does this proposal take account of the right to an effective legal remedy?

Can the Commission indicate whether asylum seekers who have been registered but have not yet been able to lodge an application and have to stay in a holding centre pending access to the procedure come at this stage within the scope of the Asylum Directives, including the Reception Conditions Directive?

Does the Commission consider that the proposed paragraph 6 of Article 27 permits the Member States to process and decide on all asylum applications in an 8-day procedure even if the time allocated in this procedure for legal assistance and preparation is shorter than the time allowed in an extended procedure which would be applicable if further examination proves to be necessary?

In its proposal to scrap the common list of European safe third countries in Article 38 (old Article 36), the Commission also scraps the standstill provision. In practice, the effect of this provision was that the article, up to the adoption of the common list, was a dead letter as only Germany had an arrangement under which it designated third countries as safe countries (*Drittstaatregelung*) and this Member State has been surrounded by Dublin countries since 2004. The abolition of the standstill clause would mean that the Member States on the eastern external borders could deny access to an asylum procedure to asylum seekers seeking entry from Belarus, Moldavia, the Russian Federation and Ukraine if they (the Member States) consider that these countries meet the stated criteria. Any individual assessment or rebuttal of the assumption of safety would thus be made impossible. How does this provision take account of the prohibition of non-refoulement and the right to an effective legal remedy, and the other proposals for better safeguards for access to the procedure? In the Impact Assessment the Commission takes the position that scrapping the entire provision would be the best guarantee for observance of Article 18 of the Charter of Fundamental Rights (right to asylum) and the case law of the Court of Justice on the right to defence (see pp. 26-28). Why has the Commission not acted accordingly in its proposal?

The Commission proposes to safeguard the right to an effective remedy in the Directive by amending Article 41 (old Article 39). According to the Commission, its proposal to oblige the Member States to arrange for an *ex nunc* review of first instance decisions by a court, by reference to both the facts and points of law, is informed by ongoing developments in the case law of the European Court of Human Rights and the Court of Justice. Can the Commission indicate precisely which judgments have led it to conclude that a judicial review should also include review of the facts, including the credibility of the alleged facts?

The Senate awaits with interest the Commission's reply to its questions.