



Morten Bødskov
Ministry of Justice
Danish Presidency of the Council of the European Union

Brussels, 20 January 2012
Our Ref: B1148

Dear Minister,

Informal Justice and Home Affairs Council meeting 26-27 January

The informal meeting of the Justice and Home Affairs Council in Copenhagen on 26-27 January will discuss, among other things, a framework on genuine practical solidarity for EU countries facing pressure from mixed migration flows. The migratory and protection challenges from 2011's upheaval in North Africa and the Middle East have tested Europe's solidarity, internally and towards its neighbours. The response has been poor on both fronts. There is a clear and widely acknowledged need to do better.

A major theme in discussions on internal solidarity is operation of the Dublin system. Exactly a year ago, the European Court of Human Rights' ruling on *M.S.S. v Belgium and Greece* highlighted the need to ensure that the application of the Dublin system fully respected fundamental rights. We therefore regret that most EU countries could not support the Commission's proposal to establish a 'temporary suspension mechanism' ensuring that asylum-seekers are not transferred to EU countries which cannot offer them adequate protection. The recent ruling on the joint cases of *N.S.* and *M.E.* before the Court of Justice of the European Union confirmed that member states cannot simply presume that fundamental rights are respected in the country deemed responsible for examining the asylum application under the Dublin Regulation. The Council's current discussions on a process for early warning, preparedness and management of asylum crises (Early Warning Mechanism), and negotiations on other amendments in the Commission's proposal recasting the Dublin Regulation, must take this important case law into account. In particular, with regard to the Early Warning Mechanism this should ensure that:

- The process is geared to preventing an asylum crisis developing in a member state and identifying protection gaps in national asylum systems which could lead to breaches of fundamental rights
- The process foresees the mandatory collection of relevant objective information, and development of indicators, to evaluate the quality of member states' asylum systems
- The process is transparent and based on analysis of all available sources, including independent NGOs
- The process can address deficiencies and trigger timely and effective solidarity measures where problems are identified, respecting the roles of the European Asylum Support Office and Commission

Member states should also support key amendments introduced by the Commission's recast proposal which would enhance protection of asylum-seekers' fundamental rights while addressing secondary movements of asylum-seekers which the Regulation seeks to reduce. These include:

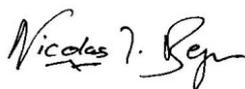
- Broader definition of family members, allowing asylum-seekers to reunite with family and/or relatives in Europe
- Ensure that asylum-seekers subject to Dublin procedures are personally interviewed and informed about the Regulation's purpose and operation

- Ensure asylum-seekers have access to an effective remedy with suspensive effect and enough time to lodge an appeal
- Stringent safeguards against arbitrary detention for those subject to Dublin procedures

Last year's events have also shown the need for increased solidarity with countries outside Europe. There are still more than 5000 people in border camps in Tunisia and Egypt from countries including Somalia, Eritrea and Ethiopia where they cannot return. Many of them were refugees in Libya before the conflict. We renew our call to EU countries to increase efforts in resettling these people out of North Africa. We encourage Denmark, a major long-standing contributor to global resettlement, to press other EU countries on this and ensure swift progress on the EU Resettlement Programme: an important step towards increasing EU countries' role and visibility in resettlement.

We hope you will consider our concerns in your discussions. We look forward to continuing our dialogue on these issues.

Yours sincerely,



Dr. Nicolas J. Beger
Director
Amnesty International European Institutions Office



Lars Normann Jørgensen
Secretary General
Amnesty International Denmark