ENE-002869/2021Answer given by Ms Johanssonon behalf of the European Commission(16.8.2021)

By virtue of Protocol 22[[1]](#footnote-2), Denmark does not take part in the EU’s migration and asylum *acquis*, with the exception of the Dublin[[2]](#footnote-3) and Eurodac[[3]](#footnote-4) Regulations, which Denmark applies on the basis of an international agreement that it concluded with the European Community.

Under international law, Denmark is bound by the *non-refoulement* principle, which is included in the Geneva Refugee Convention as amended by the Protocol relating to the status of refugees[[4]](#footnote-5). The Commission shares the concerns expressed by the United Nations High Commissioner for Refugees that conditions for safe and dignified return are not in place in Syria at present and is not supporting the return of refugees to Syria. Danish authorities have assured the Commission that they will not carry out any forced returns.

The Commission notes that the amended Act provides the legal basis for carrying out transfers to a third country, should Denmark conclude an agreement with such a country. To the Commission’s knowledge, no such agreement is yet concluded. To assess whether the amended Act respects Denmark’s international obligations, it is necessary to also examine the content of any such agreement.

External processing of asylum claims raises fundamental questions about both access to asylum procedures and effective access to protection. For Member States participating in the EU’s asylum *acquis*, such arrangements are not possible under existing EU rules or proposals under the New Pact on Migration and Asylum[[5]](#footnote-6), which upholds the right to asylum as a fundamental right guaranteed by the EU Charter of Fundamental Rights. The Commission, acting as the guardian of the Treaties, monitors the respect by all Member States of their obligations in this respect.

1. Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 22) on the position of Denmark, OJ C 326, 26.10.2012, p. 299–303. [↑](#footnote-ref-2)
2. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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. [↑](#footnote-ref-3)
3. Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. [↑](#footnote-ref-4)
4. Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees. [↑](#footnote-ref-5)
5. COM(2020)609. [↑](#footnote-ref-6)