



Mr. Donald TUSK
President of the European Council

Brussels, 3 December 2015

Dear President Tusk,

We were deeply shocked by your recent proposal that refugees arriving in the EU should be detained for up to 18 months. Not only is it directly at odds with the spirit of European values, but it goes also against both EU and international law.

You stated that "in international law and also in European law we have this rule of 18 months as the time for screening we need. You can and you should retain migrants as long as screening is ready". Here you clearly seem to forget that such measures apply for return procedures, only in exceptional cases, and not for asylum procedure. The so-called Return Directive does provide for the detention of persons in return procedures but specifies that this period should be as short as possible, up to six months, extendable by twelve months for exceptional circumstances.

You must be aware that provisions in both international and EU law restrict the possibility of detaining asylum seekers and refugees. The European Convention on Human Rights sets out an exhaustive list of grounds for detention, as does Article 8(3) of the Reception Conditions Directive; Article 9(1) of the latter and Article 28(3) of the Dublin Regulation also stipulate that detention must be for the shortest period possible. Your declaration would therefore amounts to weakening the rule of law within the EU.

Moreover, instead of strengthening the possibility of a much needed common EU asylum and migration policy, your declaration aggravates the existing divisions between Member States.

There can be no denying that there is an increasing pressure on our common European borders but solutions demand a more comprehensive and human approach than just simplistic and populist false responses.

The European Parliament has been so far a consistent and constructive partner in searching for these solutions and we therefore urge you to attend the next plenary session in Strasbourg to explain your position and debate with MEPs.

Sincerely yours,

Rebecca HARMS

Philippe LAMBERTS