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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a Regulation of the European Parliament and of the Council 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)

In parallel to the comprehensive work undertaken on all the building blocks of a well-functioning asylum and migration system, from protecting the external borders, tackling migratory flows outside the EU, strengthening return policies, and putting together and further reinforcing all the different elements of a solid crisis prevention and management mechanism, intensive negotiations were dedicated to the reform of the Dublin system.

Over the last months, different legal solutions for the future functioning of the new Dublin Regulation were discussed and explained by means of presentations, graphics and simulations.

Significant progress has been made concerning a large number of elements of the proposal, while further work is needed on some key elements related to the overall balance between solidarity and responsibility of the Dublin reform.

On 15th of May 2018 Coreper held a discussion on the overall balance between the solidarity and responsibility elements under the Dublin Regulation on the basis of a compromise proposal, which included the following elements:

- 1) a responsibility part based on stable responsibility of 5 years after the final decision; strengthened rules for the application of the criteria for determining the Member State responsible; inclusion of the beneficiaries of international protection in the scope of the Dublin Regulation; shortened deadlines for conducting all stages of the Dublin procedures; and introduction of take back notifications; combined with
- 2) a solidarity part based on fair measurement of the asylum burden of every Member State; automatic financial support (per capita for applicants, beneficiaries and returnees); automatic expert, technical and operational support in the areas of asylum and return; targeted support for external dimension directed to third countries of origin and transit, as well as first countries of asylum and neighbouring countries; and targeted allocation as necessary and primarily on a voluntary basis, with strong incentives, and with a Council Implementing Decision as last resort as well as an effective triggering guarantee.

On the basis of the outcome of the Coreper discussion held on 15th of May 2018, the Presidency revised the text by further calibrating of the balance between the two basic parts of the Dublin reform. The last compromise proposal is set out in document 8895/18 and was presented to the JHA Counsellors on 18th of May 2018.

In order to bridge Member States' positions while ensuring that Dublin IV fulfils its consensually agreed key objectives, that is curbing secondary movements and alleviating the burden of the front-line Member States, the Presidency suggests the balance between the responsibility and solidarity to be based on the following elements:

- 1) **responsibility part** based on:
 - stable responsibility of 8 years after the registration;

- strengthened rules for the application of the criteria for determining the Member State responsible;
- start of the Dublin procedures after registration;
- shortened deadlines for conducting all stages of the Dublin procedures;
- introduction of take back notifications;

combined with a:

2) solidarity part based on:

- fair measurement of the asylum burden of every Member State;
- automatic financial support (per capita for applicants, beneficiaries and returnees);
- automatic expert, technical and operational support in the areas of asylum and return;
- targeted support for the external dimension, directed to third countries of origin and transit, as well as to first countries of asylum and neighbouring countries;
- targeted allocation as necessary and primarily on a voluntary basis, with strong incentives, and, as a measure of last resort , on the basis of a Council Implementing Decision as an effective guarantee of triggering allocation.

The Presidency believes that the proposed compromise fulfils the requirements not only to strike a fair balance between the responsibility and solidarity part of the new Dublin Regulation but also to ensure an effective balance, that is a balance that will allow changing the inefficiency of the current system by providing for a future-proof and crisis-resilient EU asylum system.

In addition to the above, several delegations raised concerns as to the decision-making for triggering the second sub-phase of the challenging circumstances. In order to draw lessons from the last crisis, where speed and effectiveness proved to be essential, the Presidency initially proposed for the decision to be adopted by reversed qualified majority. Following concerns raised by some delegations in Coreper, the Presidency proposed to replace the reversed qualified majority by reinforced qualified majority.

This option was presented to the JHA Counsellors held on 18th of May 2018. While many delegations supported this, others continued raising concerns and suggested as an alternative that this second layer of decision making be entrusted to the European Council. Moving the issue to the European Council risks, however, delaying delivering the support foreseen for the second sub-phase of the challenging circumstances. In addition, any solution involving the European Council will need to keep in mind that the power of the European Council to adopt legal acts is limited to those cases where the Treaties empower it to do so and that there is no legal basis empowering it to adopt legal acts in the area of asylum.

Against this background the Presidency would like to invite Coreper to express its views on the balance achieved so far, including on possible compromise solutions for a predictable decision-making process ensuring that the Council would take swift action under challenging circumstances. The Presidency would like also to reiterate the need that all Member States show understanding for the fact that the different elements of the compromise are an interlocked set of measures aimed at taking into account the individual interests of each Member State and the common interest of the Union as a whole. It is therefore expected that all sides engage constructively and show flexibility enabling an agreement on the key components of the legal text.