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From:	Presidency
To:	Asylum Working party
Subject:	Status and reception of applicants for international protection following a negative asylum decision - Discussion paper

The number of applications for international protection in the European Union has increased in recent years, exceeding the 1 million threshold in 2023 and approximating the record levels experienced in 2015 and 2016. The recognition rate of asylum applications also increased to 53% last year, but many applicants are still not eligible for international protection.¹ The situation of rejected applicants varies depending on their legal status and the readmission cooperation with the country of origin, as well as the different practices of Member States.

The improvement of the links between asylum and return procedures has been regularly discussed at different levels and in different fora. The recently adopted migration and asylum reform introduced some developments in the relevant asylum acquis, such as by closing the time gaps that currently exist between a negative decision on an application for international protection and the issuing of a return decision.

¹ Eurostat, Asylum decisions – annual statistics, <https://shorturl.at/fhKvh>.

The situation of migrants in a situation of prolonged illegal stay or so called “non-removable returnees” was discussed in Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 20 May 2020 and will be one of the topics of the SCIFA meeting on 27 September, in relation to persons posing a security threat.

While the general rule is that a return decision should be issued and enforced following a negative asylum decision, there are situations where the return cannot be carried out because certain conditions are not fulfilled or because the principle of *non-refoulement* applies. Certain alternative national statuses are already granted by some Member States to deal with these situations. However, in many cases, rejected asylum applicants remain in a state of limbo on the territory of the Member State for a longer period, while awaiting their return to be carried out.

Lately many initiatives have been taken to improve returns, and some other important measures have been agreed upon. The new return border procedure which will be applied as of 2026 will ensure a tight link between the asylum and return procedures, but not all asylum seekers will be covered. This is a complex task for the asylum and migration authorities, which are responsible, among others, for providing reception conditions, non-refoulement examination or reintegration prospects of the third-country nationals concerned.

The precarious situation of rejected applicants with a low prospect of return poses significant challenges: while the use of detention is possible for a maximum of 18 months in accordance with the Return Directive, Member States have different practices in this respect, with some Member States having much shorter deadlines for detention in their national legislation. To ensure that rejected applicants remain available for return, there have been several discussions in recent years on the use of detention and alternatives to detention. However, no discussion was held on how each Member State would handle the **care and reception of persons whose asylum application has already been rejected by a final negative decision.**

As Member States have a strong interest in improving the efficacy of returns and addressing the challenges posed by the phenomenon of non-removable returnees, the Hungarian Presidency proposes to have a dedicated discussion on the relevant care and reception policies within the Asylum Working Party. The aim of the exchange of views is to contribute to addressing the gaps between the asylum procedure and the return procedure by examining the different practices across Member States. Therefore, the Presidency invites delegations to reflect upon the following questions at the forthcoming Asylum Working Party meeting:

- *Do you provide accommodation and support for persons whose asylum applications have been rejected by a final decision or for non-removable returnees? If so, what kind of services (i.e. healthcare) and accommodation is provided and for how long? Do you handle these two categories separately?*
- *Which authority or organisation is responsible for the care of these persons?*
- *Does any aspect of the reception conditions change if a subsequent application is lodged?*
- *What difficulties have you identified in providing reception conditions for these categories of migrants and how could this topic be addressed at EU level in order to increase coherence between national approaches while reducing the administrative burden?*