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NOTE

From: Presidency

To: Permanent Representatives Committee/Council

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11317/16 ASILE 27 CODEC 1077 + ADD 1 + ADD 2
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12112/18 ASILE 59 CSC 253 CODEC 1459
11313/16 ASIM 107 RELEX 650 COMIX 534 CODEC 1073

Subject: **Reform of the Common European Asylum System and Resettlement**

- a) Dublin Regulation:** 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) (First reading)
- b) Reception Conditions Directive:** Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) (First reading)
- c) Qualification Regulation:** Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (First reading)
- d) Asylum Procedure Regulation:** Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (First reading)
- e) Eurodac Regulation:** Proposal for a Regulation of the European Parliament and of the Council 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)
- f) EU Asylum Agency Regulation:** Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (First reading)
- g) Resettlement Framework Regulation:** Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (First reading)

= Progress report

I. INTRODUCTION

1. On 4 May and 13 July 2016, the Commission submitted seven legislative proposals aimed at reforming the Common European Asylum System (CEAS). This package included the recast of the Dublin Regulation and of the Eurodac Regulation, a proposal for a Regulation on the establishment of the European Union Agency for Asylum (EUAA), a proposal for a Regulation establishing a Common Procedure for International Protection in the EU, a proposal for a Qualification Regulation, the recast of the Reception Conditions Directive and a proposal for a Regulation establishing a Union Resettlement Framework.
2. At its meeting on 28-29 June 2018, the European Council, while welcoming the tireless efforts of the Bulgarian and previous Presidencies, underlined the need to find a speedy solution to the whole package and invited the Council to continue work with a view to concluding as soon as possible. At its meeting on 18 October 2018, the European Council assessed the state of implementation of its June conclusions and called for work to be continued on all elements as part of its comprehensive approach to migration. The European Council encouraged the Council Presidency to continue its work with a view to concluding the reform of the Common European Asylum System as soon as possible. The current progress report builds on the previous report presented to the Council on 11-12 October 2018, as set out in document 12826/18.

II. STATE OF PLAY OF THE CEAS FILES

A. *DUBLIN REGULATION*

3. In June 2018, the European Council concluded that a consensus needs to be found on the Dublin Regulation to reform it based on a balance of responsibility and solidarity, taking into account the persons disembarked following Search and Rescue operations.
4. The Austrian Presidency has continued looking for possible solutions for the overall balance between solidarity and responsibility. To this end, bilateral meetings with all Member States were held during summer at which alternative solutions within the new overall context were considered, including possible ways of taking into account the disembarkation element. In the bilateral talks it was also explored whether the comprehensive approach referred to by the European Council could include different forms of solidarity to be made available to the Member State under pressure and to which each Member State would be required to contribute. To continue work on the implementation of the conclusions of the European Council of June 2018, a Friends of Presidency (SCIFA) meeting was organised on 22 November. At this meeting, elements of a broader solidarity concept as well as alternative solutions were explored.

B. RECEPTION CONDITIONS DIRECTIVE

5. At the COREPER meeting on 29 November 2017, the Estonian Presidency obtained a mandate on the recast of the Reception Conditions Directive with broad support to start negotiations with the European Parliament. At the eighth trilogue meeting on 14 June 2018, a provisional agreement was reached between the EP Rapporteur and the then, Bulgarian Presidency. The text of the provisional agreement was presented to COREPER meeting on 20 June but did not achieve the necessary support from delegations. The Presidency held bilateral meetings with all delegations in July and, on this basis and with a view to address the key outstanding issues, presented possible amendments to the provisional agreement to the Counsellors for examination.
6. At the meeting of the JHA Counsellors on 8 November, the majority of delegations confirmed their support for the revised Presidency compromise amendments¹ to the provisional agreement and were subsequently presented to COREPER on 21 November 2018 for approval in view of a possible continuation of negotiations with the European Parliament but the Presidency concluded that consultations should continue at technical level.

¹ 13699/18

C. *QUALIFICATION REGULATION*

7. The negotiations with the European Parliament on the Qualification Regulation started in September 2017. A provisional agreement with the European Parliament was reached by the Bulgarian Presidency on 14 June 2018 at the eighth trilogue. The text of the provisional agreement was presented to COREPER on 19 June 2018 but it did not achieve the necessary support from delegations. The Presidency held bilateral meetings in July with those Member States which raised issues with the provisional agreement. Subsequently new targeted compromise proposals for certain provisions have been discussed at technical level. These have been presented to the European Parliament during a trilogue on 26 September. In this trilogue, the Parliament has informed the Presidency that, in principle, in view of the provisional agreement reached in the June trilogue meeting, it stands by the agreement reached therein and does not intend to continue the negotiations for the time being. These compromise proposals were presented in COREPER on 21 November 2018 for approval in view of a possible continuation of negotiations with the European Parliament but the Presidency concluded that consultations should continue at technical level.

D. *ASYLUM PROCEDURES REGULATION*

8. The Presidency continued the examination of the Asylum Procedure Regulation at the level of JHA Counsellors in July, September, October and November with a view of achieving a Council position. While the majority of the provisions only need some further fine-tuning, there is still one outstanding issue which proves difficult to agree: the border procedure (mandatory vs optional nature). Moreover there is a need to coordinate with the discussions taking place in related areas, such as the Return Directive.

E. EURODAC REGULATION

9. The inter-institutional negotiations on the recast of the Eurodac Regulation started in September 2017, based on the extended mandate agreed at COREPER on 15 June 2017 and the vote in the LIBE committee on 30 May 2017. On 14 February 2018, COREPER extended the Council's negotiating mandate for the Eurodac Regulation to also cover issues related to resettlement. Four trilogues took place during the Estonian Presidency and two during the Bulgarian Presidency. At the trilogue of 19 June the Bulgarian Presidency and the rapporteur managed to agree on most of the outstanding issues concerning the transfer of data to third countries for the purpose of returns and the taking of biometric data from minors. However, on the data storage period for asylum seekers the Presidency reserved its position pending more clarity on the duration of stable responsibility in the Dublin Regulation. At the same trilogue, a first discussion on the provisions dealing with the data of resettled persons took place. The rapporteur agreed to consider the approach the Council had taken on this issue. In line with what was agreed at that trilogue, the Austrian Presidency is continuing work at a technical level on the resettlement related provisions in the Eurodac Regulation. A number of technical meetings have taken place and considerable progress has been made regarding these provisions.

F. EUAA REGULATION

10. Following the agreement on a partial general approach in Council, on 20 December 2016, the Maltese Presidency started negotiations with the European Parliament in January 2017. As a result of a series of technical meetings and trilogues, the Maltese Presidency reached a provisional agreement on the enacting terms of the text during the trilogue of 28 June. The Estonian Presidency continued work at a technical level in order to align the recitals of the text with the main body of the proposal and reached an agreement with the European Parliament on this issue. The Estonian Presidency also completed the pledging for the asylum reserve pool reaching the number of 500 experts. On 6 December 2017, COREPER took note of the provisional agreement reached with the European Parliament on the text of the proposal, excluding the text placed in square brackets referring to other proposals of the CEAS. On 12 September 2018, the Commission presented an amended proposal for the EUAA Regulation, which builds on the provisional agreement reached by the co-legislators in 2017. The amended proposal further builds on the provisional agreement concerning the operational and technical assistance enabling the Agency to carry out the procedure for international protection or parts of the procedure at the administrative stage without prejudice to the competence of national competent authorities to take decisions on individual applications. The amendments also aim to ensure complementarity between the work of the European Border and Coast Guard Agency (EBCG) and the future EUAA, in particular in the deployment of Migration Management Support Teams. The first examination of the amended EUAA proposal by the Asylum Working Party took place under the Austrian Presidency on 25 September 2018, and continued at the level of JHA Counsellors on 8 October, 26 October and 19 November 2018. As a result, most of the outstanding issues have been solved and the Presidency hopes to be able to submit the text for COREPER's endorsement in the near future.

G. RESETTLEMENT REGULATION

11. The mandate for negotiations with the European Parliament on the Resettlement Regulation was adopted on 15 November 2017. The inter-institutional negotiations started in December 2017 and six trilogues have taken place in 2018 under the Bulgarian Presidency, which allowed making progress regarding most elements of the proposal. On 13 June 2018, the Presidency and the European Parliament reached a broad political agreement on the main elements of the Regulation. The text of the provisional agreement was presented to COREPER on 20 June 2018 but it did not achieve the necessary support from delegations. Consequently, the Austrian Presidency held bilateral meetings with those Member States that were not in a position to endorse the provisional agreement. Based on these talks, new compromise proposals were presented to Parliament. However, after a first technical trilogue, the Parliament informally indicated that in principle and for the time being it stands by the provisional agreement reached in the June trilogue. On 9 October 2018, JHA Counsellors discussed possible compromise amendments focusing on the key concerns expressed by the Member States during the bilateral meetings. These compromise proposals were presented in COREPER on 21 November 2018 for approval in view of a possible continuation of negotiations with the European Parliament but the Presidency concluded that consultations should continue at technical level.