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**Interinstitutional Files:**

2016/0131 (COD)  
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**NOTE**

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From: Presidency

To: Permanent Representatives Committee/Council

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11318/1/16 REV 1 ASILE 28 CODEC 1078  
11316/16 ASILE 26 CODEC 1076 + ADD 1  
11317/16 ASILE 27 CODEC 1077 + ADD 1 + ADD 2  
8765/1/16 REV 1 ASILE 13 EURODAC 3 ENFOPOL 132 CODEC 630  
8742/16 ASILE 12 CODEC 619  
11313/16 ASIM 107 RELEX 650 COMIX 534 CODEC 1073

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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

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## **I. INTRODUCTION**

On 4 May and 13 July 2016, the Commission submitted seven legislative proposals aimed at reforming the Common European Asylum System. 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 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.

The Estonian Presidency has taken forward the examination of the above-mentioned proposals, initiated by the Netherlands Presidency and continued by the Slovak and Maltese Presidencies. The current progress report builds on the previous report presented to the Council on 13 October, as set out in document 12802/17.

## **II. DUBLIN REGULATION**

Pursuant to the repeated requests by the European Council on making progress on the EU's asylum policy and building on the progress made under the Maltese Presidency, the Estonian Presidency has taken forward the discussions with a view to achieving further convergence towards an agreement, which strikes the right balance between responsibility and solidarity and ensures resilience to future crises. In bilateral contacts with delegations, the Estonian Presidency tried to consolidate the agreement on the more consensual and stable items and to find as much common ground as possible on issues where the compromise has so far not proved possible.

The consultations focused, among other issues, on the detailed aspects of the main measures of solidarity (e.g. the threshold for triggering the solidarity measures, the overall ceiling for allocations, the composition of the allocation pool, etc.), which might be adopted when a Member State's asylum system faces a significant migratory pressure.

The overall conclusion of the Maltese Presidency remains: the expectation is that the reformed CEAS should ensure the right balance between responsibility and solidarity. Member States also need to fully implement the acquis. The system needs to be efficient, avoiding pull factors and discouraging secondary movements and it should deliver solidarity effectively and efficiently when and as needed, in particular when a Member State faces a disproportionate migratory pressure.

In addition, Member States broadly supported the fact that the solidarity and responsibility components should be seen in a wider context. The internal and external components of migration and asylum policies need to complement each other to prevent a crisis deriving from a mass influx of third country nationals or stateless persons to the EU Member States. EU asylum and returns procedures need to be swift and effective, in particular when persons arrive from safe third countries or have manifestly unfounded claims such as when they arrive from safe countries of origin. Furthermore, effective returns are part of the functioning migration management system but also a key factor towards credible communication towards potential migrants not in need of international protection and are about to embark on dangerous journeys across the Mediterranean.

As set out in its conclusions of 19 October 2017<sup>1</sup>, the European Council intends to return to this matter at its meeting in December and will seek to reach a consensus during the first half of 2018.

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<sup>1</sup> EUCO 14/17

### **III. RECEPTION CONDITIONS DIRECTIVE**

The proposal on the recast of the Reception Conditions Directive was initially examined by the Asylum Working Party, and since July this year, by the JHA Counsellors. The Presidency submitted compromise proposals in relation to the most controversial issues, in particular the provisions related to the measures aimed at preventing secondary movements, including the assignment of place of residence, access to labour market and the reduction and withdrawal of material reception conditions, as well as the provisions related to unaccompanied minors. This strategy proved to be successful and, at the Coreper meeting on 29 November 2017, the Presidency obtained a mandate with a broad support to start negotiations with the European Parliament. The first trilogue will take place on 12 December 2017.

### **IV. QUALIFICATION REGULATION**

Under Estonian Presidency, a partial mandate for negotiations with the European Parliament was obtained in Coreper on 19 July 2017. On 29 November 2017, Coreper agreed - with an almost unanimous support - to extend this mandate and to include the definition of 'family members'. The provisions containing cross-references to other proposals of the CEAS package are - for the time being - not included in the mandate. A new annex, containing the various information to be provided to the beneficiaries of international protection, still needs further discussion in the Council preparatory bodies and, therefore, is not yet included in the mandate. The Estonian Presidency will pursue its efforts to reach an agreement on this annex.

The negotiations with the European Parliament started in September 2017. So far three trilogues have already taken place with numerous technical meetings in-between. A fourth trilogue is expected to take place on 12 December. The first discussions highlighted, among others, the following sensitive issues: the approximation of the two statuses (refugees and beneficiaries of subsidiary protection), the length of residence permits, the internal protection alternative and its application, the mandatory nature of the status review, and the possibility for a beneficiary of international protection to remain on the territory of the Member State for three months after the withdrawal of the status on the basis of cessation grounds ("grace period"). On these aspects, the positions of the Council and of the European Parliament are very different and, therefore, the negotiations have progressed at a slower rate than anticipated, with no concrete compromises agreed on the most important issues.

The Presidency's aim is to advance the discussions with the European Parliament as much as possible by the end of its term. However, discussions need to be continued under Bulgarian Presidency.

## V. PROCEDURES REGULATION

The Estonian Presidency finalised the first examination of the whole proposal on the Asylum Procedure Regulation in the beginning of September. A second round of examination in which the Asylum Working Party discussed compromise proposals presented by the Presidency was completed in the beginning of the December.

In June 2017, the European Council gave a clear mandate to the Council to align the Commission's proposal on the Asylum Procedures Regulation, as far as the safe third country concepts are concerned, with the effective requirements of the Geneva Convention and the EU primary law. In order to identify the best way to fulfil this mandate, the Presidency held a policy debate on this issue in SCIFA on 28 September 2017. The draft compromise proposals put forward by the Presidency in relation to the safe country provisions were generally considered by the Member States as being in line with that mandate. However, further discussions on this issue are necessary in view of a complete agreement.

## **VI. EURODAC REGULATION**

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. Three trilogues have taken place so far and two more are planned before the end of the term of the current Presidency. While it has been possible to find common ground between the co-legislators on most provisions of the recast Regulation, the Council and the EP continue to have divergent views on the length of the data storage period for asylum seekers. Provisions relating to the consequences for non-compliance with the obligation to provide biometric data have also proved difficult in the negotiations. The outstanding issues will continue to be discussed and, if possible, agreed at the forthcoming trilogues on 5 and 12 December. In addition, in order to complete the mandate for negotiations with the European Parliament on the inclusion of data of resettled persons in Eurodac, the Presidency hopes to present to Coreper for approval the relevant modifications, before the end of its term.

## **VII. EUAA REGULATION**

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 an agreement on the enacting terms of the text during the trilogue of 28 June. The Estonian Presidency has continued the 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. On 6 December, Coreper will be invited to confirm the agreement reached with the European Parliament on the entire text of the proposal, including the recitals, but excluding the text placed in square brackets referring to other proposals of the CEAS.

## **VIII. RESETTLEMENT REGULATION**

JHA Counsellors pursued the discussion on the Resettlement Framework Regulation under the Estonian Presidency and examined draft compromise proposals on the 18 September, 3 October and 7 November. On 15 November, Coreper gave the Estonian Presidency a unanimous mandate for starting negotiations with the European Parliament.

The Commission proposal provided only for resettlement as the main instrument for admitting third country nationals or stateless persons in need of international protection. The agreed text of the mandate for negotiations with the European Parliament accommodates most of the concerns raised by the Member States and is more flexible, as it also includes the humanitarian admission. Taking into account the concerns frequently expressed by some delegations, the voluntary nature of resettlement has also been clearly reflected in the text.

A first trilogue with the European Parliament will take place on 13 December. The Bulgarian Presidency will continue the negotiations on this file during the first semester of 2018.

## **IX. CONCLUSION**

COREPER and Council are invited to take note of this progress report.

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