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To: Permanent Representatives Committee/Council

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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) (First reading)
- 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. On 13-14 December 2018, the European Council called for further efforts to conclude negotiations on the Asylum Agency and on all parts of the Common European Asylum System, respecting previous European Council conclusions and taking into account the varying degree of progress on each of these files.

The current progress report builds on the previous report presented to the Council on 6-7 December 2018, as set out in document 14597/18.

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. During the Austrian Presidency, several proposals for the overall balance between solidarity and responsibility as called for by the European Council were explored, such as the different forms of solidarity to be made available to the Member State under pressure to which other Member States would be required to contribute, or the mechanism for responsibility and solidarity, which should bring together contributions by all Member States externally, at the Union's external borders and internally.

However, the discussions, including the bilateral consultations carried out by the Austrian Presidency in the framework of the *Tour des Capitales*, grounded the assessment of the Romanian Presidency that there was no realistic prospect of making any major progress on the Dublin reform in the short term, and therefore concentrated its main efforts on advancing as much as possible the other asylum reform files during the time available before the upcoming European Parliament elections.

The approach of Presidency aiming to advance the negotiations on the technical level as much as possible with a constant back-up approval in the COREPER did not ease the concerns of the Member State regarding the national lines for the package approach, and it influenced the course of the discussions /negotiations for the rest of the proposals in the CEAS reform package.

At the same time, the Presidency addressed at various occasions the recurring situation of migrants rescued at sea by organising exchanges of views with all Member States with a view of exploring possible solutions for temporary arrangements for disembarkation. The discussion is expected to continue.

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 2018 but did not achieve the necessary support from delegations. The Austrian Presidency scheduled 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. Following examination by the Counsellors, the Austrian Presidency presented compromise amendments¹ to the provisional agreement to COREPER on 21 November 2018 for approval in view of a possible continuation of negotiations with the European Parliament. However, the Austrian Presidency concluded that further attempts at the technical level should be made to gain further support from delegations.
7. To this end, the Romanian Presidency held further consultative talks with those delegations which had raised concerns on substance in January. However, and following further examination, the Presidency concluded that no further changes to the compromise amendments, as presented to COREPER on 21 November 2018, are necessary. On 23 January 2019, COREPER confirmed support to the proposed amendments² with a view to continue negotiations at technical level with the European Parliament.
8. However, following preliminary discussions with the European Parliament, it appeared that the European Parliament stands by the provisional agreement reached in June 2018 and does not wish to reopen negotiations

¹ 13699/18

² 5458/19

C. *QUALIFICATION REGULATION*

9. 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 Austrian Presidency held bilateral meetings in July with those Member States which raised issues with the provisional agreement. Subsequently new targeted compromise proposals have been discussed and presented to the European Parliament during a trilogue on 26 September 2018. In this trilogue, the Parliament has informed the Presidency that, in principle, it stands by the provisional agreement reached in June 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 to gain further support of delegations.
10. To this end, the Romanian Presidency held further bilateral contacts and concluded that no changes to the compromise amendments, as presented to COREPER on 21 November 2018, are necessary. On 23 January 2019, COREPER confirmed support to the proposed amendments³ with a view to continuing negotiations with the European Parliament at technical level. In informal contacts with the European Parliament it became clear that the European Parliament stands by the provisional agreement reached in June 2018 and does not wish to reopen negotiations.

³ 5456/19

D. ASYLUM PROCEDURES REGULATION

11. The Presidency continued the examination of the Asylum Procedure Regulation at the level of JHA Counsellors with a view of achieving a Council position as soon as possible. While the majority of the provisions only need some further fine-tuning, there are still two outstanding issues which prove more difficult to agree on: the border procedure and its exact scope, as well as the definition of the 'final decision' contained in Article 4 of the proposal. Four JHA Counsellors meetings were organized, which focused on the latest proposal of compromise for the border procedure, issued by the Presidency. A reading of the whole text was also made, registering progress on the file and coming closer to a consolidated version, which will be addressed to COREPER for information and, possibly, further guidance in March.

E. EURODAC REGULATION

12. 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 2018, the Bulgarian Presidency and the rapporteur managed to agree on most of the outstanding issues. 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. Subsequently, the EP raised a number of legal concerns on the taking and transmitting of biometric data in the resettlement procedure. A series of technical meetings took place in the second half of 2018 and at the beginning of 2019 in order to find a solution that could be acceptable to the co-legislators. JHA Counsellors discussed the latest EP compromise suggestions at their meetings on 24 January and 4 February 2019.

As these suggestions were clearly rejected by Member States, the Presidency prepared a compromise package on the resettlement related provisions in combination with the 10-year data storage period. The compromise package was discussed at the meeting of JHA Counsellors on 11 February and in COREPER on 15 February 2019. While the majority of Member States could support the content of the Presidency's text, COREPER did not give a mandate to the Presidency to proceed to a trilogue with the EP due to the "package approach". This message was communicated to the EP. The Presidency convened a meeting of JHA Counsellors on 25 February 2019 to present the latest EP compromise suggestion. While Member States welcomed the latest suggestion from the EP, they did not give the Presidency a mandate to continue negotiations with the EP for the same reasons as indicated above.

F. EUAA REGULATION

13. 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, 19 November 2018 and on 15 January. On 23 January, the Presidency submitted the amended proposal to COREPER requesting a mandate for negotiations with the EP. During the discussions in COREPER it was clear that there was no sufficient support for the Presidency's compromise suggestions both for reasons of substance and for reasons related to the "package approach". The Presidency continued work at a technical level and convened a meeting of JHA Counsellors on 4 February where a revised compromise text was discussed. Since the position of the Member States remained the same as in the previous discussion, the Presidency considered that all possibilities have been exhausted at technical level.

G. RESETTLEMENT REGULATION

14. 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.

On 16 January 2019, COREPER discussed again these compromise amendments. The Presidency concluded that while there was a broad agreement on the substance, it would not yet discuss it in a political trilogue with the European Parliament and that COREPER would be consulted before entering into a political trilogue with the European Parliament on the remaining issues that were left out from the provisional agreement reached under the Bulgarian Presidency.

As regards the provisions that were left out from the provisional agreement, JHA Counsellors discussed on 18 December 2018, 15 and 25 January 2019 possible compromise amendments to be discussed further with the European Parliament. On 30 January 2019, COREPER discussed those amendments and the Presidency concluded that while there was agreement on the substance, it would not yet discuss it in a political trilogue with the European Parliament.

After informal technical discussions with the European Parliament, the Presidency decided to suggest some new compromise proposals as regards key concerns expressed by the Member States in June and to explore the possibility to engage in a political trilogue with the European Parliament on the whole text. These compromise amendments were discussed at JHA Counsellors on 11 February 2018.

On 15 February 2019 COREPER discussed again the provisions that were left out from the provisional agreement and the new compromise proposals as regards the key concerns expressed by the Member States in June 2018. However, while the majority of Member States could support the content of the Presidency's text, COREPER did not give a mandate to the Presidency to proceed to a trilogue with the EP due to the "package approach". Consequently, the Presidency conveyed this message to the European Parliament.