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From: Presidency
To: Permanent Representatives Committee/Council

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Subject: 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
– Progress report

1. On 4 May 2016, the Commission adopted a proposal for the Regulation on the European Union Agency for Asylum¹. The proposal aims to strengthen the role of EASO and develop it into an Agency which facilitates the implementation and improves the functioning of the Common European Asylum System (CEAS). The Agency is one of the tools that can be used to address effectively the structural weaknesses of the CEAS that have been further exacerbated by the recent large-scale arrival of migrants and asylum seekers to the EU.

¹ doc. 8742/16 + ADD 1

2. Detailed examination of the proposal by Member States started at the Asylum Working Party meeting on 15 June and continued on 6 and 29 September as well as on 10 and 27 October. During these meetings Member States completed the first round of examination of the proposal including Presidency compromise suggestions. On 4 November, the examination of the proposal continued at the level of JHA Counsellors. Since then meetings of JHA Counsellors have taken place on 14 and 16 November. Other meetings are planned for 1 and 5 December. While a large majority of Member States welcomed the general aim of the proposal to strengthen the role of EASO, it was clear from the very beginning that several aspects of the proposal needed detailed examination and further clarification.
3. Member States expressed a number of concerns regarding in particular the mechanism for monitoring and assessing the asylum and reception systems of Member States that the Agency is tasked to establish (Chapter 5). Several Member States expressed the view that the role suggested to the proposed Agency in this respect would be too broad and that it would overlap with the powers of the Commission. In addition, several Member States considered that they should have a greater role in the monitoring exercise. This issue was discussed at a meeting of SCIFA on 13 September and that of the JHA Council on 13 October. It emerged from these discussions that the majority of delegations could accept a more limited role for the Agency in monitoring, while emphasising it should retain its primary role providing support to Member States. The vulnerability assessment, as laid down in the European Border and Coast Guard Regulation, was considered as a good example in this respect. The Presidency redrafted the relevant provisions of the proposal following the guidance given primarily by the JHA Council. JHA Counsellors are currently discussing these redrafted provisions. A considerable number of delegations continue to retain reservations on the issue of monitoring. The Presidency intends to invite COREPER to examine the specific issue of monitoring at one of its upcoming meetings.

4. Another issue that raised major concerns among Member States was the system of operational and technical assistance (Chapter 6), in particular the deployment of asylum support teams. Member States advocated for more streamlined provisions, providing additional flexibility and enabling the Agency to respond to different situations, needs and tasks. This issue was discussed at the meeting of SCIFA on 13 September. Following this meeting, the Presidency redrafted the relevant Chapter. In the subsequent discussions on the asylum reserve pool it emerged that a number of delegations would prefer to have an Annex to this Regulation setting out the number of experts that each Member State should provide to the pool. This approach differs from the proposed system giving the Management Board of the Agency the competence to decide on the share of each Member State. In order to agree on such an Annex, the Presidency has held bilateral talks with delegations.
5. The mechanism triggered in a situation of disproportionate pressure placing exceptionally heavy and urgent demands on the asylum or receptions systems of Member States to the extent of jeopardising the functioning of the CEAS, was also the subject of lengthy discussions. The vast majority of Member States were of the opinion that the measures to be taken by the Agency in this case should be adopted by a Council decision, on the basis of a proposal from the Commission, and not by a Commission's implementing act.
6. Other concerns raised by delegations include the obligation for Member States to take into account, when examining applications for international protection, the Agency's guidance notes on country of origin information. Other issues raised by delegations relate to the application of operational standards, indicators, guidelines and best practices developed by the Agency, the processing of personal data by the Agency as well as some aspects of its organisational structure.
7. The Presidency intends to solve most of the above-mentioned outstanding issues before the end of its term. Therefore, it has planned some more meetings of JHA Counsellors for this purpose.
8. Against this backdrop, COREPER and Council are invited to take note of this progress report.
