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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	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) - Conditional confirmation of the final compromise text with a view to agreement

1. On 13 July 2016, in the framework of the reform of the Common European Asylum System (CEAS), the Commission submitted a proposal for a Regulation on standards for the qualification on 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 (Qualification Regulation)[1]. The aim of the proposal is to harmonise the criteria for granting international protection, on the one hand, and the rights and benefits granted to beneficiaries of international protection, on the other.

[1] 11316/16

2. Detailed examination of the proposal by Member States started at the Asylum Working Party meeting on 28 October 2016. On 19 July 2017, COREPER agreed upon a mandate for negotiations with the European Parliament[2]. Subsequently, the mandate was extended twice: once on 29 November 2017[3] when agreement was found on the definition of family members and once on 28 February 2018[4] when COREPER agreed on the content of Annex II, which contains the information that needs to be given to beneficiaries of international protection under Article 24.

3. Negotiations with the European Parliament started in September 2017 and, under the Estonian and Bulgarian Presidencies, 8 trilogues took place. In preparation of these, numerous meetings of JHA Counsellors as well as technical meetings between the co-legislators were convened.

4. The text of the Regulation which has been provisionally agreed can be found in the addendum to this note. It retains the flexibility of the Council mandate with respect to whether the content of the rights stemming from the two statuses should be the same or not, while at the same time it preserves the differences in the qualification criteria between the two statuses, thus securing the red lines of the majority of Member States. The main elements of the provisional agreement are, among others, the following:

[2] 10475/17
[3] 14731/17
[4] 6303/18

– *Provisions on family members (Articles 2 (9) and 25)*

The European Parliament and the Council had opposing views both on the definition of family members in Article 2 (9), and on the related provisions in Article 25. While the European Parliament insisted on including siblings, foster children and married minors as family members of beneficiaries of international protection, one of the Council's red lines was to preserve as much as possible the existing *acquis*. As a result of extensive negotiations, the Presidency managed to convince the European Parliament to exclude siblings and foster children from the definition, and to give Member States complete discretion on whether to accept or not married minors as family members, in accordance with their national law - a possibility which already exists under the Qualification Directive. In addition, Article 2 (9) together with the relevant recital (16) further improve the language of the Qualification Directive by clearly defining the scope of the notion of dependency by limiting it only to adult children with serious non-temporary illness or severe disability. Furthermore, after several rounds of negotiations, the Presidency managed to convince the European Parliament **not** to codify in Article 25 the recent judgment C-550/16 of the European Court of Justice on the right to family reunification of minors who turn 18 during the asylum procedure.

– *Internal protection alternative (Article 8)*

The agreed text on Article 8 improves significantly the Qualification Directive in two ways: firstly, in line with the Council position, Member States now have an obligation to apply the internal protection alternative where the State or agents of the State are not the actors of persecution, and secondly, it clearly establishes the presumption of the Qualification Directive that in cases where the actors of persecution or serious harm are the State or agents of the State, internal protection alternative does not exist. Even in these cases however, Member States are able to apply the internal protection alternative where the risk of persecution stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country.

– *Validity of the residence permits (Article 26)*

While for the European Parliament one of the most important goals in the negotiations was to harmonise the validity of the residence permits granted to refugees and to beneficiaries of subsidiary protection at 5 years for both, Member States had strong red lines with regard to retaining the difference between the two and keeping their current national practices. The agreed text preserves the red lines of all Member States, as it retains the deadline of 90 days for issuing the residence permit as per the Council position, and establishes the minimum validity of residence permits as it is now regulated in the Qualification Directive.

– *Review of refugee and subsidiary protection status (Articles 15 and 21)*

In order to agree to the red lines of the Council with regard to the definition of family members, the internal protection alternative and the residence permits, the European Parliament insisted on deleting the separate articles on review. Nevertheless, the combined reading of the Articles on cessation and withdrawal (Articles 11 and 14) clearly point to an obligation for the determining authority to review the status: in order to withdraw the international protection, which Member States are obliged to do in Article 11, a review must first be initiated. What is more, by not regulating the review of the status in the Qualification Regulation, Member States would be free to initiate a review of the status on the basis of information from national, Union and international sources and as often as they consider necessary, as this would remain under their national competences.

– *Non-refoulement (Article 23 (2))*

In order to retain essential elements of the Council position, the Presidency provisionally agreed to the deletion of the two exceptions to the principle of non-refoulement in Article 23 (2). Nevertheless, they still apply as they are implicitly covered by the first paragraph of Article 23 which states that the principle of non-refoulement needs to be respected in accordance with Union and international law. As the two exceptions stem from the Geneva Convention, and the Geneva Convention is part of international law, the Presidency considers that the text remains faithful to the Council position.

5. In light of this, the Presidency considers that the text agreed is well balanced, maintains the essential elements of the Council position and ensures the best possible outcome for the Council.

6. Against this background, COREPER is invited to confirm the agreement on the compromise text negotiated with the European Parliament (Addendum 1), on the understanding that

– the current Regulation is part of the overall CEAS reform and the final agreement will therefore be subject to additional confirmation;

– the bracketed provisions which contain links to other CEAS files, need to be discussed and agreed with the European Parliament at a moment when the negotiations on all those files have reached a stage which allows to finalise the text of these provisions.