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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 as well as on 1 and 5 December.
3. A large majority of Member States welcomed the general aim of the proposal to strengthen the role of EASO so that it becomes a fully-fledged agency, equipped with the necessary tools to facilitate the implementation of CEAS, including by enabling convergence in the processing of applications for international protection and improving the functioning of CEAS by providing operational and technical assistance to Member States, in particular when the asylum and reception systems are under particular pressure.
4. There were various aspects of the proposal that needed detailed examination and further clarification. Member States expressed a number of concerns regarding in particular the mechanism for monitoring and assessing the asylum and reception systems of Member States, which the Agency is tasked to establish (Chapter 5). Several Member States expressed the view that the role suggested to the Agency in this respect would be too broad and 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 the meetings of SCIFA on 13 September and of the JHA Council on 13 October. It emerged from these discussions that the majority of delegations could accept a more limited monitoring role for the Agency, 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 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 number of delegations continue to retain reservations on the issue of monitoring. Therefore, the Presidency decided to invite COREPER to discuss the specific issue of monitoring to seek further guidance on this matter.

5. The system of operational and technical assistance (Chapter 6) has also been the subject of lengthy discussions. Member States generally 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 the 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 is holding bilateral talks with delegations.
6. The mechanism triggered in a situation of disproportionate pressure placing exceptionally heavy and urgent demands on the asylum or reception systems of Member States to the extent of jeopardising the functioning of the CEAS, was also the subject of long 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. Other issues raised by delegations included 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 concerns were related 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. On all the above-mentioned issues, the solutions that should meet the concerns of the Member States have been found.
7. The Presidency intends, to a large extent, solving the remaining outstanding issues before the end of its term. Therefore, it has planned some more meetings of JHA Counsellors.
8. Against this backdrop, COREPER and Council are invited to take note of this progress report.