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WORKING PAPER

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From:	Presidency
To:	JHA Counsellors on Financial Instruments
N° Cion doc.:	ST 10153/18 + ADD1
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund - written contributions on - CEAS provisions (Article 16 and 17)

With reference to CM 2027/20, delegations will find attached the Presidency discussion paper and are requested to examine and send written comments on.

Proposal for a Regulation establishing the Asylum and Migration Fund

Presidency discussion paper on key provisions linked to CEAS proposals

As delegations will be aware, one of the reasons why the Council was only able to adopt a partial general approach in relation to this file was that certain provisions refer to parts of the CEAS package which was still being discussed. This concerns Articles 16 and 17 in particular. However, as delegations will also be aware from the Work Programme of the Commission for 2020¹, further proposals are expected in this field. Whilst the precise timing of those proposals is not yet clear, it would seem highly unlikely, in any event, that it would be possible to conclude the ordinary legislative procedure in relation to those proposals in time for them to enter into force and become applicable before the end of the year². In addition, the recent global events are likely to cause further delays.

Given the importance of having the AMF Regulation in place before the end of 2020, it appears to the Presidency that the Council's preparatory bodies should start examining these provisions while paying attention to ensuring that any references to the future CEAS are adapted accordingly. As far as possible this should be done in such a way as to not prejudice the outcome of the discussions in the Council on such proposals as the Commission may make, and nor should it fundamentally alter the policy choices made by the Council when adopting its partial general approach on the AMIF file. At the same time, given the stage we are at, it is also considered appropriate to also consider elements of the EP amendments at this stage, to aid in making progress in the eventual negotiations.

In addition, in order to ensure that the measures agreed in the new AMF Regulation do not prejudice the agreement on future relevant CEAS legislation, which would obviously be after the adoption of the AMF Regulation, it would seem prudent to provide for a review clause in the new AMF Regulation: This clause would specifically call upon the Commission to submit a legislative proposal for an amendment of Articles 16 and 17 of the AMF Regulation to the extent strictly necessary to ensure consistency with the relevant new legislative developments as regards CEAS. Any such amendment will obviously have to respect the legitimate expectations of recipients.

¹ COM(2020) 37 final, 31 January 2020.

² The average duration of the OLP is about 22 months, from proposal to publication. Translation and legal linguistic verification alone take 8 weeks.

With these elements in mind, the Presidency invites delegations to examine the text proposals annexes to this note and to send feedback both as regards the basic approach and substance. The Presidency wishes to stress that the present paper is for discussion only. It is therefore assumed that all delegations have a scrutiny reserve. However, given the current circumstances and the inability to organise physical meetings, delegations are highly encouraged to send their feedback, in writing and in word format to the Presidency (Igor.Kusan@mvep.hr; mbrac@mup.hr; dario.dudas@mvep.hr; tnincevic@mup.hr) and to the Council Secretariat (MFF-Home@consilium.europa.eu), by not later than Friday 8 May 2020.

New Recital

A new recital is inserted:

"In view of the fact that certain aspects of this Regulation relate to the current system of asylum in the Union, it is appropriate to provide for a review mechanism to ensure consistency with any future revision of that system. Consequently, in the event that the Union's asylum system is revised in a manner that could have an impact on the functioning of this Regulation, the Commission should present an appropriate proposal to amend this Regulation to the extent necessary."

Article 2: Definitions

Definition of 'resettlement' is replaced by the following:

"(g) 'resettlement' means the admission, following a referral from the United Nations High Commissioner for Refugees ('UNHCR'), of third-country nationals or stateless persons from a third country to which they have been displaced, to the territory of the Member States, and who are granted international protection and have access to a durable solution in accordance with Union and national law;"

Article 16

Article 16 is replaced by the following:

"Resources for Resettlement and humanitarian admission

1. Member States shall, in addition to their allocation calculated in accordance with point (a) of Article 11(1), receive every two years an additional amount of a lump sum of EUR [10 000] for each person admitted through resettlement.
2. Member States shall, in addition to their allocation calculated in accordance with point (a) of Article 11(1), receive every two years an additional amount based on a lump sum of EUR [6 000] for each person admitted through humanitarian schemes.

3. The lump sum referred to in paragraph 1 shall be increased to EUR [15 000] for each vulnerable person, from the following vulnerable groups, who has been admitted through resettlement:
 - (a) women and children at risk;
 - (b) unaccompanied minors;
 - (c) persons having medical needs that can be addressed only through resettlement;
 - (d) persons in need of emergency resettlement or urgent resettlement for legal or physical protection needs, including victims of violence or torture.
4. Where a Member State resettles a person belonging to more than one of the categories referred to in paragraphs 1, 2 and 3, it shall receive the lump sum for that person only once.
5. Where appropriate, Member States may also be eligible for lump sums for family members of persons referred to in paragraphs 1, 2 and 3 to ensure family unity.
6. The additional amounts referred to in paragraphs 1, 2 and 3 of this Article shall be allocated to the Member States every two years, for the first time in the individual financing decisions approving their national programme Those amounts shall not be transferred to other actions under the national programme.
7. To take account of current inflation rates and relevant developments in the field of resettlement, and within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to adjust, if deemed appropriate, the lump sums referred to in paragraphs 1 and 2 of this Article, to take into account the current rates of inflation, relevant developments in the field of resettlement, as well as factors which can optimise the use of the financial incentive brought by the lump sums.

Article 17

Article 17 is replaced by the following:

"Resources for the transfer of applicants for international protection or of beneficiaries of international protection"

1. With a view to implementing the principle of solidarity and fair sharing of responsibility and in the light of Union policy developments within the implementation period of the Fund, Member States shall receive, in addition to their allocation calculated in accordance with point (a) of Article 11(1), an additional amount based on a lump sum of EUR [10 000] for each applicant for international protection or beneficiary of international protection³ transferred from another Member State.
2. Member States may also be eligible for lump sums for family members of persons referred to in paragraph 1, where appropriate, provided that those family members have been transferred in accordance with this Regulation.
3. A Member State referred to in paragraph 1 shall receive an additional contribution of EUR [10 000] per applicant who has been transferred from another Member State and granted international protection for the implementation of integration measures.
4. A Member State taking over responsibility for an applicant international protection or beneficiary of international protection referred to in paragraph 1 or a Member State as referred to in paragraph 2 shall receive an additional contribution of EUR [10 000] per person for whom the Member State can establish on the basis of the updating of the data set referred to in Article 10(d) of Regulation (EU) 603/2013 (Eurodac Regulation) that the person has left the territory of the Member State, on either a compulsory or voluntarily basis in compliance with a return decision or a removal order.

³ The Presidency would envisage using the definitions in Article 2 of Regulation 516/2014.

5. The Member State covering the cost of transfers referred to in paragraphs 1 and 2 shall receive a contribution of EUR [500] for each applicant of international protection or beneficiary of international protection transferred to another Member State.
6. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.
7. The additional amounts referred to in paragraphs 1 to 5 of this Article shall be allocated to the Member States in their programmes provided that the person in respect of whom the contribution is allocated was, as applicable, effectively transferred to a Member State, effectively returned or registered as an applicant in the Member State responsible in accordance with Regulation (EU) 604/2013 [Dublin Regulation].
8. To effectively pursue the objectives of solidarity and fair sharing of responsibility between Member States within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to adjust, if deemed appropriate, the lump sums referred to in paragraphs 1, 3, 4 and 5 of this Article to take into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by the lump sums."

Article 34a

A new Article 34a is inserted:

"Review

In the event of legislative amendments to the Union legal framework regarding the matters referred to in paragraph (g) of Article 2 and Articles 16 and 17 of this Regulation, the Commission shall, where appropriate, make a proposal to amend this Regulation to ensure consistency with those legislative amendments, whilst respecting the legitimate expectations of recipients. "