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From:	Presidency
To:	JHA Counsellors on Financial Instruments
N° prev. doc.:	WK 7022 2020 INIT
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund - written contributions on CEAS provisions

With reference to CM 3050/20, delegations will find attached the Presidency compromise proposal on key provisions linked to CEAS proposals and are requested to examine and send written comments on.

Proposal for a Regulation establishing the Asylum and Migration Fund

Presidency compromise proposal on key provisions linked to CEAS proposals

Following the comments raised at the informal video conference of the members of the JHA Counsellors on Financial Instrument on 1 July 2020, and subsequently in writing (WK7444/20), delegations will find annexed to this note, a revised Presidency compromise proposal on the provisions relevant to CEAS in the abovementioned proposal.

The following are the main changes in comparison with the previous version (WK7022/20):

- A new recital recalling that under the existing *acquis*, resettlement and relocation are carried out on a voluntary basis;
- The term 'resettles' is replaced with 'admits' in Article 16(4) to clarify that this provision applies to persons who are resettled and admitted through humanitarian admission;
- A new paragraph 2b in Article 17 is inserted to align the conditions applicable to family members of beneficiaries of international protection with those applicable to family members of persons who have been resettled or relocated; and
- Replacing the amount [EUR 500] with 'XXXX' in Article 17(5).

In addition, with regard to the term 'family member', the Presidency recalls that this term is defined in Article 2(d) and applies across the Regulation, including Article 16 and 17. The Presidency does not see the need to change that for the purposes of these provisions.

All changes compared to the original text annex to WK 3687/20 are indicated in **bold**. Changes compared to the latest version of the Presidency compromise (WK 7022/20) are indicated in **bold underlined**. All deletions are indicated in ~~strike through~~.

Delegations are kindly requested to send their comments on the revised Presidency compromise text in the annex to this note to the Presidency (jens.schumacher@auswaertiges-amt.de; pol-in1-5-eu@brue.auswaertiges-amt.de) and to the General Secretariat of the Council (MFF-Home@consilium.europa.eu) by **noon (CET) on Tuesday 14 July 2020**.

Recitals

Recital 7 is amended as follows:

- (7) The Fund should support the efficient management of migration flows, inter alia by promoting common measures in the area of asylum, including Member States' efforts in receiving persons in need of international protection through resettlement, [humanitarian admission] and the transfer of applicants for or beneficiaries of international protection between Member States, supporting integration strategies and a more effective legal migration policy, so as to ensure the Union's long-term competitiveness and the future of its social model and reduce incentives for irregular migration through a sustainable return and readmission policy. The Fund should support the strengthening of cooperation with third countries to reinforce management of flows of persons applying for asylum or other forms of international protection, avenues on legal migration and to counter irregular migration and ensure sustainability of return and effective readmission to third countries. **Support provided by the fund is without prejudice to the entirely voluntary nature of resettlement and relocation of applicants for, and beneficiaries of, international protection under the current legal framework of the Common European Asylum System.**

The following new recital is inserted:

"In view of the fact that certain aspects of this Regulation relate to the current **Common European Asylum System** ~~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 **Common European 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 'applicant for international protection' is replaced by the following:

"(a) 'applicant for international protection' means an applicant as defined in point (c) of Article 2 of *Directive 2013/32/EU*;"

Definition of 'beneficiary of international protection' is replaced by the following:

"(b) 'beneficiary of international protection' within the meaning of point (b) of Article 2 of *Directive 2011/95/EU*;"

Definition of 'humanitarian admission' is replaced by the following:

"(e) 'humanitarian admission' means the admission, following, where requested by a Member State, a referral from the European Asylum Support Office, the UNHCR, or another relevant international body, of third-country nationals or stateless persons, from a third country to which they have been forcibly displaced, to the territory of the Member States and who are granted international protection or a humanitarian status under national law that provides for rights and obligations equivalent to those of Articles 20 to 34 of *Directive 2011/95/EU* for beneficiaries of subsidiary protection"

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, **or any other status which gives them similar rights and benefits under Union and national law**, 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 [XXXX10-000] 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 of EUR [XXXX6-000] for each person admitted through humanitarian **admission schemes**.
3. The ~~lump sum~~ **amounts** referred to in paragraphs 1 and 2 shall be increased to EUR [XXXX15-000] for each vulnerable person, from the following vulnerable groups, who has been admitted through resettlement **or humanitarian admission**:
 - (a) women and children at risk;
 - (b) unaccompanied minors;
 - (c) persons having medical needs that can be addressed only through resettlement **or humanitarian admission**;
 - (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 **admits** ~~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~~ **amount** for that person **for one category only** ~~once~~.
5. Where appropriate, Member States may also be eligible for **the respective** ~~lump sums~~ **amounts** for family members of persons referred to in paragraphs 1, 2 and 3 to ensure family unity.
- 5a. **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.**

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.~~ **The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. The amounts referred to in paragraphs 1, 2 and 3 may be included in the payment applications to the Comission provided that the person in respect of whom the amount is allocated was effectively resettled or admitted.**
- 6a. **Member States shall keep the information necessary to allow the proper identification of the persons resettled or admitted and of the date of their resettlement or admission.**
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 **amounts 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 **those amounts 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 [XXXX40 000] for each applicant for international protection or beneficiary of international protection¹ transferred from another Member State **in accordance with Article 17 of Regulation (EU) 604/2013/ [Dublin Regulation]**
2. Member States may also be eligible for ~~amounts 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 **Article 17 of Regulation (EU) 604/2013/ [Dublin Regulation]** ~~- this Regulation.~~
- 2a. Member States shall receive, in addition to their allocation calculated in accordance with point (a) of Article 11(1), an additional amount of EUR [XXXX] for each beneficiary of international protection² ~~and their family members~~ transferred from another Member State.
- 2b Where appropriate, Member States may also be eligible for the respective amounts for family members of persons referred to in paragraph 2a to ensure family unit.

¹ ~~The Presidency would envisage using the definitions in Article 2 of Regulation 516/2014.~~

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

3. A Member State referred to in paragraph 1 shall receive an additional ~~amounts contribution~~ of EUR [~~XXXX10 000~~] per applicant who has been transferred from another Member State and granted international protection for the implementation of integration measures. **Member States referred to in paragraphs 2a and 2b shall also receive the additional amount referred to in this paragraph for integration measures.**
4. A Member State taking over responsibility for an applicant ~~for~~ international protection ~~or beneficiary of international protection~~ **as** referred to in paragraph 1, or a Member State as referred to in paragraph 2, shall receive an additional contribution of EUR [~~XXXX10 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 States, on either a compulsory or voluntary basis, in compliance with a return decision or a removal order.
5. The Member State covering the cost of transfers referred to in paragraphs 1, 2, **2a and 2b** shall receive a contribution of EUR [~~XXXX500~~] 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 ~~amount 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]. **The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme.**
- 7a. **Member States shall keep the information necessary to allow the proper identification of the persons transferred and of the date of their transfer.**

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 ~~amounts lump-sums~~ referred to in paragraphs 1, ~~2a, 2b,~~ 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 **those amounts** ~~lump-sums~~."

Article 34a

A new Article 34a is inserted:

"Review

In the event of legislative amendments to the Union legal framework **on the Common European Asylum System** ~~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."