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PROGRESS REPORT

from : Presidency

to : Permanent Representatives Committee / Council

Subject : **Asylum**

- a) Proposal for a Regulation of the European Parliament and the Council establishing the criteria and mechanisms for determining the Member States responsible for examining an asylum application lodged in one of the Member States by a third-country national or a stateless person (recast) **(LA)**
 - b) Proposal for a Regulation of the European Parliament and the Council concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Regulation establishing the criteria and mechanisms for determining the Member States responsible for examining an asylum application lodged in one of the Member States by a third-country national or a stateless person (recast) **(LA)**
 - c) Proposal for a Directive of the European Parliament and the Council amending Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers (recast) **(LA)**
 - d) Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office **(LA)**
 - e) Proposal for a Decision of the European Parliament and of the Council amending Decision n° 573/2007/EC establishing the European Refugee Fund for the period 2008/2013 by removing funding for certain Community actions and altering the limit for funding such actions **(LA)**
 - Report by Presidency on state of play
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Introduction

1. In October 2008, the European Council expressed its commitment in the European Pact on Immigration and Asylum to complete the Common European Asylum System provided for in The Hague Programme including the establishment of a European Asylum Support Office. In this context, and building on the current legislative acts that had introduced common minimum standards in the field of asylum, the Commission adopted abovementioned series of "second phase" proposals.
2. On 9 December 2008, the Commission adopted proposals amending respectively the Reception Conditions Directive, the so called Dublin Regulation and the EUODAC Regulation, followed, on 18 February 2009, by the proposals for a Regulation establishing a European Asylum Support Office and a proposal amending the Decision on the European Refugee Fund.¹ The Commission presented the proposals concerning the European Asylum Support Office to the JHA Council at its meeting on 26/27 February 2009 followed by a first exchange of views.
3. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of the Reception Conditions Directive and are not bound by or subject to its application.

In accordance with Article 3 of the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice that they will take part in the adoption and the application of the Regulation on the European Support Office and the Dublin and EUODAC Regulation.

¹ 16934/08 EUODAC 7 CODEC 1763 + ADD 1, 2, 3 - COM(2008) 825 final
16929/08 ASILE 26 CODEC 1758 + ADD 1, 2, 3 + ADD 1 REV 1 (en) - COM(2008) 820 final
16913/08 ASILE 25 CODEC 1755 + ADD 1, 2, 3 + REV 1 (en) + REV 2 (fr) - COM(2008) 815 final
6700/09 ASILE 5 CODEC 212 + ADD 1, 2 - COM(2009) 66 final
6702/09 ASILE 6 CADREFIN 7 CODEC 213 - COM(2009) 67 final

Delegations took note that Denmark, in accordance with Articles 1 and 2 of the Protocol annexed to the Treaty on the European Union and the Treaty establishing the European Community, will not participate in the adoption of any of the proposals and will not be bound by or subject to their application.

General

4. The Council's preparatory bodies have achieved substantial progress on all five proposals. A first reading has been completed in all cases while compromise proposals, prepared with a view to taking into account the concerns raised by delegations, are already under discussion in respect of a number of the proposals.
5. The European Parliament has also prioritised work on the measures leading to the adoption of legislative resolutions on 7 May setting out the amendments which it is proposing to the Commission proposals. The Presidency has been in contact with representatives of the Parliament with a view to ensuring that Parliament was made aware of the position of Council on issues arising to the extent possible. An examination of the amendments being proposed has already begun within the Council or will start in June. The position in relation to individual measures is as follows:

Reception Conditions

6. The Reception Conditions Directive lays down minimum standards for the reception of applicants for international protection. The main objective of the amending proposal is to ensure higher standards of treatment for asylum seekers with regard to reception. The Commission also aims at harmonising national rules on reception conditions in order to limit the phenomenon of secondary movements of asylum seekers amongst Member States.
7. The principal questions on which further work is necessary at the level of the Council include the definition of family members, detention, access to employment, and material reception conditions, including reception conditions for persons with special needs.

8. The positions of Parliament also differs from the emerging position in Council on a number of these provisions - detention, access to employment etc. - and will therefore also need to be reconciled in further discussions.

Dublin

9. The purpose of the Dublin Regulation is to lay down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, lodged in one of the Member States by a third-country national or a stateless person. The objective of the amending proposal is to enhance the system's efficiency (including situations of particular pressure on Member States' asylum procedures) as well as ensuring that the needs of the applicants are met under the responsibility determination procedure.
10. The principal questions on which further work is necessary at the level of the Council include: the definition of family members, provision for the temporary suspension of transfers, partially the criteria for determining the Member States responsible for examining the application for international protection, remedies against transfer decisions, detention as well as certain aspects of the chapter dealing with general principles and safeguards in respect of the person applying for international protection.
11. The Parliament either broadly supports the Commission proposal in these respects or would like in some instances to go further. There will therefore also be a need to seek to bridge the positions of Council and Parliament on these questions in addition to certain other matters.

Eurodac

12. The purpose of the EURODAC system is to assist, by way of comparing fingerprints of the third-country nationals or a stateless person concerned, in determining which Member State is to be responsible pursuant to the Dublin Regulation framework for examining an application for international protection lodged in one of the Member States by such a person. The updated EURODAC system shall consist of a Central System which operates a computerized central database of fingerprint data as well as of the electronic means of transmission between the Member States and the Central System. The Commission submitted the recast proposal in order to address certain substantial issues such as the extension of the Regulation's scope to cover all applicants for international application, provision for the operational management of the system by a Management Authority that is to be established, the deadlines for collection and transmission of fingerprints and the time for data storage.
13. Considerable progress has been made in the negotiations among delegations on this proposal and the number of questions outstanding at the level of the Council is limited. These nevertheless include the question of deadlines for the collection and transmission of fingerprint data, the storage period for data collected in relation to those apprehended in connection with the illegal crossing of an external border, the age at which fingerprinting should take place and whether making the collection and storage of fingerprint data of those found illegally present in a Member State should be made obligatory or not.
14. The position of Parliament differs from the emerging position in Council on a number of these issues but the points separating Council and Parliament are nevertheless more limited by comparison to other proposals.

European Asylum Support Office

15. The proposal on establishing a European Asylum Support Office and the related proposal amending the Decision on the European Refugee Fund are aimed at helping to improve the implementation of the Common European Asylum System, improving practical cooperation among Member States on asylum and provision and/or coordination of operational support to Member States facing specific and disproportionate pressures on their national asylum systems.
16. Considerable progress has been made in the negotiations among delegations at the level of the Council on the two proposals related to the establishment of a European Support Office and the number of questions outstanding is again limited. These include the question of financing, the information to be made available to the Office and issues connected with the proposed arrangements in relation to Member States facing specific and disproportionate pressures on their national asylum systems.
17. Issues raised by the amendments tabled by Parliament include its preference for a binding solidarity mechanism and the role of Parliament vis à vis the Office.

Conclusion

18. With regard to the five legislative proposals in the field of asylum, subject to agreement by Coreper, the Council is invited:
 - to take note of the progress achieved to date,
 - to instruct Council's preparatory bodies to continue work, taking account of the legislative resolutions adopted by the European Parliament, in order to achieve the necessary level of agreement in Council and with a view to engaging in further contacts with the European Parliament in due course.
