



**Brussels, 14 May 2018
(OR. en)**

8816/18

LIMITE

**ASILE 23
EURODAC 5**

NOTE

From: Presidency
On: 17 May 2018
To: Strategic Committee on Immigration, Frontiers and Asylum

Subject: Reform of the Common European Asylum System
- Building blocks within different legislative files of the CEAS Reform

In 2016 the European Commission proposed a thorough reform of the Common European Asylum System (CEAS). The seven legislative proposals aim at creating a resilient asylum system, alleviating the burden on the front-line Member States and curbing secondary movements. Concluding the reform is necessary as the amendments will reinforce the EU's capabilities for better managing migration flows.

Streamlining the links between the legislative proposals is crucial for the effective functioning of the whole asylum system. Progress in the negotiations of each of these seven proposals is different and it is of paramount importance to have a full picture of the content and the process as a whole.

The Presidency distributed several times infographics and flowcharts aimed at explaining the asylum process in general and the steps within the different stages. Meanwhile, the Presidency has identified certain elements in the different acts that are interrelated and in its view require a horizontal discussion.

I. STREAMLINING THE DIFFERENT STEPS OF ACCESS TO THE PROCEDURE WITHIN THE DIFFERENT LEGISLATIVE ACTS:

- **making-registering-lodging an application for international protection**¹

The asylum procedure starts once an application for international protection is **made**. The obligation as to where an applicant must make an application is foreseen in the Dublin Regulation and Asylum Procedure Regulation (APR).

The application should be **registered** in the Member State where the application is made. The registration should be done promptly and not later than three working days from when it is made or within six working days if an application is made to an authority that is not responsible for registering it (APR). The latest Presidency proposals in Eurodac and APR provide for the obligation for the Member States to collect the biometric data of every applicant for international protection upon registration and transmitted to the central system within 72 hours from the registering the application. Data identifying the applicant will be available in the system and could be used at an earlier stage for determining the Member State responsible considering that the extended data categories collected upon registration would allow for such an early determination.

In order to streamline the process and to provide certain coherence with the changes discussed at a technical level with regard to the APR and Eurodac, the Presidency would like to adapt the text of the Dublin Regulation and to open for the possibility **to start the Dublin procedure after the registration of the application**. That will speed up the procedure and will provide an additional tool for improving the efficiency of the asylum system and preventing secondary movements.

The lodging of the application would trigger the start of the examination of the application by the Member State responsible and the provision of certain reception conditions, for example access to the education.

¹ The content of the document is based on the latest Presidency proposals in APR, Eurodac and Dublin.

As a general rule once the application is registered the procedure for determining the Member State responsible can start. The Member State determined as being the Member State responsible should examine the application in accordance with the rules set out in the APR and the Qualification Regulation. In the latest Presidency compromise text of APR, the time-limits for examination start to run from the moment when the Member State responsible is determined (in cases where it is the same Member State where the application is made and registered) or when the transfer is completed and the applicant reports to the competent authorities.

Considering the recent proposals under the Eurodac Regulation and the Asylum Procedure Regulation linked to the registration of an application and aiming at streamlining procedures, do delegations support introducing the respective amendments in the Dublin Regulation, e.g. starting the procedure for determining the Member State responsible from the registration of an application?

Would delegations agree to a further amendment to the Dublin Regulation and APR whereby the lodging of the application would be done only after the Member State responsible has been determined or should an application be lodged both in the Member State of first entry and in the Member State responsible?

II. II. STRENGTHENING THE SANCTIONS AGAINST ASYLUM SHOPPING AND ABSCONDING

According to the Dublin system, asylum seekers neither have the right to choose the Member State of application nor the Member State responsible for examining the application. However, some Member States offer more attractive reception conditions and asylum systems than others resulting in an incentive for asylum shopping.

One of the purposes of the asylum reform is to discourage abuses and prevent secondary movements of applicants within the EU, in particular by including clear obligations for applicants to apply in the Member State of first entry and remain in the Member State determined as responsible for the examination of their application. This also requires proportionate procedural and material consequences in case of non-compliance with their obligations.

A thematic discussion on limiting abuse and secondary movements took place in the Asylum Working Party under the Maltese Presidency and a lot of work has gone into streamlining the relevant provision in the asylum package as a whole. Nevertheless, Member States still consider that the envisaged sanctions are not enough to act as a deterrent and prevent abuse.

In order to limit the cases of absconding and to ensure the stability within the system, several sanctions are envisaged in different stages of the procedure, such as for example:

1. Making and lodging an application in 'wrong' Member State (non-compliance with Article 4(1) and (1a) of Dublin Regulation) – this behaviour of the applicant will lead to the examination of the application in an accelerated examination procedure (shorter time-frame; non-automatic suspensive effect of the appeal);
2. Making but not lodging an application in the right Member State (non-compliance with Article 28 of APR) – this behaviour of the applicant will lead to rejection of the application as implicitly withdrawn (non-automatic suspensive effect of the appeal; next application by the same applicant in any Member State will be a subsequent application).
3. Non-compliance with the obligation to remain on the territory of the Member State where the applicant is required to be present (non-compliance with Article 4(2a) of the Dublin Regulation) - this behaviour of the applicant will lead to the rejection of the application as implicitly withdrawn if no justification is provided by the applicant (APR), right to reception conditions only in the Member State responsible, where the applicant is required to be present; restriction of freedom of movement (RCD); detention (RCD/Dublin).
4. Avoiding registration and fingerprinting (non-compliance with Article 27 of APR and Article 10 of Eurodac) – this behaviour of the applicant will lead to rejection of the application as implicitly withdrawn; reduction or withdrawal of some material reception conditions (RCD); detention if it is necessary to identify the applicant (RCD);
5. Not attending the personal interview (non-compliance with conditions in Article 12 of APR) - this behaviour of the applicant will lead to rejection of the application as implicitly withdrawn if no justification is provided by the applicant (APR).

The proper functioning of all these new measures for preventing abuse of the asylum system is directly linked with the principle for making the responsibility of the Member State determined as responsible stable enough so as to ensure that the current incentives for asylum shopping are effectively discouraged. This makes the concept of the stable responsibility crucial not only for the application of the new Dublin Regulation but for the whole CEAS reform.

Against this background, the Presidency invites delegations to express their opinion on the following questions:

- 1) Do delegations agree that the legislative proposals under the CEAS reform sufficiently address the abuses of the asylum system?*
- 2) Do delegations agree that the application of the concept of stable responsibility is of paramount importance not only for the balance within Dublin Regulation but also for the overall functioning of the whole reformed CEAS?*

MAKING	REGISTERING	LODGING
<ul style="list-style-type: none">• where - Article 4 Dublin• how - Article 25 APR• applicant benefits minimum material reception conditions - Article 16 RCD• assessment of special reception needs - 21 RCD• start tracing the family members - Article 23 RCD	<ul style="list-style-type: none">• taking biometrics - Article 10 Eurodac• registering the application - Article 27 APR• issuing a document for registration - Article 29 APR• start of the procedure for determining MS responsible - Article 21 Dublin	<ul style="list-style-type: none">• where - Article 4 Dublin• how - Article 28 APR• start of the procedure for examination of the application

