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From: Presidency

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Subject: Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

This document contains compromise proposals suggested by the Presidency in relation to Recitals (1) - (29).

Taking into account the ongoing examination of the Dublin Regulation, the compromise proposals should be read in conjunction with the compromise proposals made in relation to the Dublin Regulation.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold underline**;

- deleted text is in ~~striketrough~~.

2016/0224 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing a common procedure for international protection in the Union and repealing
Directive 2013/32/EU¹**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

¹ **HU, IT, NL, SI:** parliamentary reservation. **BE, CZ, EE, EL, ES, FI, FR, HU, IE, IT, LT, NL, PL, PT, SE, SI:** scrutiny reservation. **FR, PL, SK:** Directive instead of a Regulation.

Whereas:

- (1) The objective of this Regulation is to streamline, simplify and harmonise the procedural arrangements of the Member States by establishing a common procedure for international protection in the Union. To meet that objective, a number of substantive changes are made to Directive 2013/32/EU of the European Parliament and of the Council² and that Directive should be repealed and replaced by a Regulation. References to the repealed Directive should be construed as references to this Regulation.
- (2) A common policy on asylum, ~~including a Common European Asylum System~~ which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to ~~those who, forced by circumstances, legitimately~~ **third country nationals and stateless persons who** seek protection in the Union. ~~Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.~~
- (3) The Common European Asylum System (**CEAS**) is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and **establishes** a system for determining the Member State responsible for asylum seekers. Notwithstanding ~~the~~ progress achieved so far in the progressive **made in the** development of the ~~Common European Asylum System~~ **CEAS**, there are still significant disparities between the Member States **in as regards** the types of procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants and beneficiaries of international protection. ~~These divergences~~ **Those disparities** are important drivers of secondary movements and undermine the objective of ensuring that in a ~~Common European Asylum System~~ **CEAS** all applicants are equally treated wherever they apply in the Union.

² Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ L180, 29.6.2013, p. 60).

- (4) In its Communication of 6 April 2016,³ **“Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe”**, the Commission set out its **priority areas** options for **structurally** improving the ~~Common European Asylum System~~ **CEAS**, namely ~~to establish~~ **the establishment of** a sustainable and fair system for determining the Member State responsible for ~~asylum seekers~~ **applicants for international protection**, ~~to~~ **the reinforcement of** the Eurodac system, ~~to~~ **the achievement of** greater convergence in the EU asylum system, ~~to~~ **the prevention of** secondary movements within the Union and **the development of an enhanced** ~~new~~ mandate for the European Union Agency for Asylum. That Communication is in line with calls by the European Council on 18-19 February 2016⁴ to make progress towards reforming the EU's **Union's** existing framework so as to ensure a humane, **fair** and efficient asylum policy. ~~It~~ **The Communication** also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report **“The situation in the Mediterranean and the need for a holistic EU approach to migration”** of 12 April 2016.
- (5) For a well-functioning ~~Common European Asylum System~~ **CEAS**, substantial progress should be made regarding the convergence of national asylum systems. The current disparate asylum procedures in all Member States should be replaced with a common procedure for granting and withdrawing international protection applicable across all Member States pursuant to Regulation (EU) No XXX/XXX of the European Parliament and of the Council (Qualification Regulation)⁵, ensuring the timeliness and effectiveness of the procedure. Applications **for the international protection** made by ~~the~~ third-country nationals and stateless persons ~~for the international protection~~ should be examined in a procedure, which is governed by the same rules, regardless of the Member State where the application is lodged to ensure equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant.

³ COM(2016) 197 final.

⁴ EUCO 19.02.2016, SN 1/16.

⁵ OJ L [...], [...], p. [...].

- (6) A common procedure for granting and withdrawing international protection should limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, by ~~replacing the current discretionary provisions with harmonised rules~~ **streamlining procedures** and by clarifying the rights and obligations of applicants ~~and~~ **as well as** the consequences of non-compliance with those obligations, and create equivalent conditions for the application of Regulation (EU) No XXX/XXX (Qualification Regulation) in Member States.
- (7) This Regulation should apply to all applications for international protection made in the territory of the Member States, including those made at the external border, on the territorial sea or in the transit zones of Member States, and the withdrawal of international protection. Persons seeking international protection who are present on the territorial sea of a Member State should be disembarked on land and have their applications examined in accordance with this Regulation.
- (8) This Regulation should apply to applications for international protection in a procedure where it is examined whether the applicants qualify as beneficiaries of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). In addition to the international protection, the Member States may also grant under their national law other national humanitarian statuses to those who do not qualify for the refugee status or subsidiary protection status. In order to streamline the procedures in Member States, the Member States ~~should have the possibility to~~ **may** apply this Regulation also to applications for any kind of such other protection.
- (9) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

- (10) The resources of the Asylum, Migration and Integration Fund should be mobilised to provide adequate support to Member States' efforts in applying this Regulation, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum and reception systems.
- (11) The European Union Agency for Asylum should provide Member State with the necessary operational and technical assistance in the application of this Regulation, in particular by providing experts to assist national authorities to ~~receive, register, and examine~~ applications for international protection **and to assist the determining authority in the performance of its tasks including as regards the examination of applications for international protection** and by providing updated information on third countries, including country of origin information and guidance on the situation in specific countries of origin. When applying this Regulation, Member States should take into account operational standards, indicators, guidelines and best practices developed by the European Union Agency for Asylum.
- (12) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to the procedure, the opportunity to cooperate **fully** and properly communicate with the **competent** ~~responsible~~ authorities so as, **in particular,** to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure.

- (13) The applicant should be provided with an effective opportunity to present all ~~relevant~~ elements ~~at his or her disposal~~ **available to him or her which substantiate the application or are relevant for the procedures in accordance with this Regulation** to the **competent determining authorities**. For this reason, the applicant should, subject to limited exceptions, enjoy the right to be heard through a personal interview on the admissibility or on merits of his or her application, as appropriate. For the right to a personal interview to be effective, the applicant should be assisted by an interpreter **where necessary to ensure appropriate communication** and be given the opportunity to provide his or explanations concerning ~~the grounds for~~ his or her application in a comprehensive manner. The applicant should be given sufficient time to prepare and consult with his or her legal adviser or **other** counsellor (**legal adviser**), and he or she may be assisted by the legal adviser or counsellor during the interview. The personal interview should be conducted under conditions which ensure appropriate **privacy and** confidentiality and by adequately trained and competent personnel, including where necessary, personnel from authorities of other Member States or experts deployed by the European Union Agency for Asylum. The personal interview may only be omitted when the determining authority **considers that the application is not inadmissible** or is **able** to take a positive decision **with regard to refugee status** on the **basis of the evidence available when** ~~application or is of the opinion that~~ the applicant is unfit or unable to be interviewed owing to enduring circumstance beyond his or her control **or in the case of subsequent applications**. Given that the personal interview is an essential part of the examination of the application, **a thorough report or a recording of** the interview **should be made** ~~should be recorded~~ and the applicants and their legal advisers should be given access to **report**, the recording, ~~as well as to the report or~~ **the** transcript **of the recording** of the interview before the determining authority takes a decision, or in the case of an accelerated examination procedure, at the same time as the decision is made.

- (14) It is in the interests of both Member States and applicants **that applicants receive at a very early stage comprehensive information on the procedure to be followed and on their rights and obligations. That information should be provided to all applicants, at the latest upon the registration of the application, by means of a common leaflet which may be complemented by oral information where necessary. In addition, it is essential** to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making. For that purpose, ~~access to legal assistance and representation should be an integral part of the common procedure for international protection. In order to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, and to ensure the economy of the procedure, applicants should, upon their request and subject to conditions set out in this Regulation, be provided with free~~ **information on legal and procedural aspects** legal assistance and representation during the administrative procedure. **Free information on legal and procedural aspects in the administrative procedure may be provided by dedicated services of the Member State or by non-governmental organisations entrusted by the Member State with this task of providing such information. Furthermore, to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, applicants should, upon their request and subject to limited exceptions, be provided with free legal assistance and representation** and in the appeal procedure. **It should also be possible for Member States to provide for free legal assistance and representation at the administrative stage in accordance with national law.** The free legal assistance and representation should be provided by **legal advisers permitted** ~~persons competent to provide them~~ under national law **to assist or represent applicants.**

- (15) Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, ~~sex~~ gender, sexual orientation, gender identity, disability, serious **physical or mental illness or, mental disorders, including when these are** or as a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence. It is necessary to ~~systematically~~ assess whether any individual applicant is in need of special procedural guarantees. **That assessment should be initiated and identify those applicants as early as possible from the moment an application is made by the competent authorities entering first in contact with the applicant, based on visible signs, behaviours, statements or relevant documents, and should be carried out by the determining authority after the application is lodged** and before a decision is taken.
- (16) ~~To ensure that the identification of applicants in need of special procedural guarantees takes place as early as possible, the~~ **The relevant** personnel of the **competent** authorities **of Member States** ~~responsible for receiving and registering applications should be adequately trained to~~ **recognise that applicants may be in need of special procedural guarantees and take appropriate actions to ensure that the necessary support is provided** ~~to detect signs of vulnerability signs and they should receive appropriate instructions for that purpose.~~ Further measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Regulation should, *inter alia*, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

- (17) Applicants who are identified as being in need of special procedural guarantees should be provided with **the necessary** adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the **relevant** elements ~~needed to substantiate~~ **concerning** their application for international protection. Where it is not possible to provide adequate **the necessary** support in the framework of an accelerated examination procedure or a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures. ~~The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.~~
- (18) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak **freely** about their past experiences, **including** in cases involving ~~gender-based~~ persecution **based on sex, gender identity or sexual orientation**. For this purpose, women **in particular** should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. Where **requested and** possible, **applicants** ~~women and girls~~ should be provided with ~~female~~ interpreters and interviewers ~~of the sex they prefer~~. Medical examinations on women and girls should be carried out by female medical practitioners, in particular having regard to the fact that the applicant may have been a victim of gender-based violence. The complexity of gender-related claims should be properly taken into account **in particular** in procedures based on the concept of first country of asylum, the concept of safe third country, the concept of safe country of origin and in the notion of subsequent applications.

- (19) **When processing an application for international protection, the competent authorities should be able to determine the travel route of the applicant as well as to verify the identity of the applicant. For that purpose, the competent authorities may need to search the applicant or to have his or her items searched. Those items may include electronic devices such as laptops, tablet computers or mobile phones. Any such search should be carried out in a way that respects fundamental rights and the principle of proportionality.** ~~When, in the framework of an application being processed, the applicant is searched, that search should be carried out by a person of the same sex. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.~~
- (20) The best interests of the child should be a primary consideration of Member States when applying this Regulation, in accordance with Article 24 of the Charter and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background. In view of Article 12 of the United Nations Convention on the Rights of the Child concerning the child's right to be heard, **where** the determining authority **considers it is in the best interests of the child and necessary for the examination of the application, it should organise** ~~shall provide a minor the opportunity of a personal interview~~ **for a minor taking into account in particular his or her age and maturity** ~~unless this is manifestly not in the minor's best interests.~~

(21) The common procedure streamlines the time-limits for an individual to accede to the procedure, for the examination of the application by the determining authority ~~as well as for the examination of first level appeals by judicial authorities~~. Whereas a disproportionate number of simultaneous applications **made within the same period of time** may risk delaying access to the procedure and the examination of the applications, a measure of flexibility to exceptionally extend those time-lines may at times be needed. However, to ensure an effective process, extending those time-limits should be a measure of last resort considering that Member States should regularly review their needs to maintain an efficient asylum system, including by preparing contingency plans where necessary, and considering that the European Union Agency for Asylum should provide Member States with the necessary operational and technical assistance. Where Member States foresee that they would not be able to meet the set time-limits, they should request assistance from the European Union Agency for Asylum. Where no such request is made, and because of the disproportionate pressure the asylum system in a Member State becomes ineffective to the extent of jeopardising the functioning of ~~Common European Asylum System~~ **CEAS**, the Agency may, based on an implementing decision of the Commission, take measures in support of that Member State.

- (22) Access to the common procedure should be based on a three-step approach consisting of the making, registering and lodging of an application. Making an application is the first step that triggers the application of this Regulation. A third-country national or stateless person is considered to have made an application when expressing a **need** ~~wish~~ to receive international protection from a Member State. **It should be possible to express such a wish to the competent authorities of the Member State in question, which should include at least border guards, police and authorities responsible for detention facilities.** Such a wish may be expressed in any form and the individual applicant need not necessarily use specific words such as international protection, asylum or subsidiary protection. The defining element should be the expression by the third country national or the stateless person of a fear of persecution or serious harm upon return to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence. In case of doubt whether a certain declaration may be construed as an application for international protection, the third-country national or stateless person should be expressly asked whether he or she wishes to receive international protection. The applicant should benefit from rights under this Regulation and Directive XXX/XXX/EU (Reception Conditions Directive)⁶ as soon as he or she makes an application.
- (23) An application should be registered as soon as it is made. At this stage, the authorities responsible for ~~receiving and~~ registering applications **such as, including the police, immigration authorities,** border guards, ~~police, immigration authorities and~~ authorities responsible for detention facilities **or reception facilities** should register the application together with the personal details of the ~~individual~~ applicant. Those authorities should inform the applicant of his or her rights and obligations, as well as the consequences for the applicant in case of non-compliance with those obligations. **The information may be provided also by organisations working with the authorities and assisting them.** The applicant should be given a document certifying that an application has been made. The time limit for lodging an application starts to run from the moment an application is registered.

⁶ OJ L [...], [...], p. [...].

- (24) The lodging of the application is the act that formalises the application for international protection. The applicant should be given the necessary information as to how and where to lodge his or her application and he or she should be given ~~an effective~~ **the** opportunity to do so. At this stage he or she is required to submit all the elements at his or her disposal needed to substantiate and complete the application. ~~The time limit for the administrative procedure starts to run from the moment an application is lodged. At that time~~ **Shortly after the application is lodged**, the applicant should be given a document which certifies his or her status as an applicant, ~~and which should be valid for the duration of the his or her right to remain on the territory of the Member State responsible for examining the application.~~
- (25) The applicant should be informed properly of his or her rights and obligations in a timely manner and in a language that he or she understands or is reasonably meant to understand. Having regard to the fact that where, for instance, the applicant refuses to cooperate with the national authorities by, **in particular**, not providing the elements necessary for the examination of the application ~~and~~ **or** by not providing his or her fingerprints or facial image, ~~or fails to lodge his or her application within the set time limit~~, the application could be rejected as ~~abandoned~~ **implicitly withdrawn**, it is necessary that the applicant be informed of the consequences for not complying with those obligations.
- (26) To be able to fulfil their obligations ~~under this Regulation~~, the personnel of the authorities **applying this Regulation** ~~responsible for receiving and registering applications~~ should have appropriate knowledge and **where necessary** should receive ~~the necessary~~ training in the field of international protection, including with the support of the European Union Agency for Asylum. They should also be given the appropriate means, **including the necessary competent personnel**, and **guidance** ~~instructions~~ to effectively perform their tasks.

- (27) ~~In order to facilitate access to the procedure~~ **Where an application is made** at border crossing points and in detention facilities, ~~information should be made available on the possibility to apply for international protection. Basic communication~~ **should be ensured through interpretation arrangements** necessary to enable the competent authorities to understand if persons declare their wish to receive international protection ~~should be ensured through interpretation arrangements.~~
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