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NOTE

From: Presidency
To: Permanent Representatives Committee

Subject: Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)
- State of play and guidance for further work

1. On 13 July 2016, the Commission adopted, as part of the legislative package on the reform of the Common European Asylum System (CEAS), a proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)¹.
2. The proposal was subject to extensive discussions at the Asylum Working Party and at JHA Counsellors meetings. The Permanent Representatives Committee granted a mandate to start negotiations with the European Parliament on 29 November 2017² and a first trilogue meeting with the European Parliament was held on 12 December 2017.

¹ COM (2016) 465 final

² 14779/17

3. In total, eight trilogue meetings were held. At the last trilogue meeting on 14 June 2018, the Bulgarian Presidency reached a provisional agreement with the European Parliament rapporteur. The text³ of this provisional agreement was presented to COREPER on 20 June 2018 but did not obtain sufficient approval from Member States. Certain Member States expressed concerns regarding the substance of the text that had been negotiated with the European Parliament.
4. In this context, on 10/11 July 2018, the Austrian Presidency convened bilateral meetings with all Member States with the view of identifying those provisions that would still need to be modified in order for the text of the provisional agreement to gain the necessary support.
5. Following these bilateral meetings, the Austrian Presidency identified possible compromise amendments⁴ which have been presented to delegations in the JHA Counsellors meeting on 7 September 2018. On the basis of the comments raised at the meeting and subsequently submitted in writing, the Presidency prepared revised compromise amendments⁵. These were discussed at the JHA Counsellors meeting on 8 November 2018, where the majority of delegations confirmed their support for these changes.
6. **The proposed amendments include:**
 - Recital 42a: Further clarifications that any reduction or withdrawal of material reception conditions should not go below the minimum required under Union and international law.
 - Article 6b: The proposed amendments better reflect current practices of Member States regarding the allocation of applicants to a geographical area.

³ 10009/1/18 REV 1 + ADD 1

⁴ 11760/18

⁵ 13699/18

- Article 11(2): Clarifications to the effect that in the exceptional cases where unaccompanied minors need to be detained on the grounds defined in Article 8, their safety and well being must also be guaranteed.
 - Recital 30b and Article 23(1): Clearer text on the role of the person provisionally appointed to assist unaccompanied minors until a representative is designated.
7. Given the European Parliaments reluctance to reopen negotiations following the provisional agreement, changes thereto should be kept to an absolute minimum.
 8. Guidance for further work is without prejudice to the CEAS package approach.
 9. Changes compared to the previous version of the text, as set out in 10009/18 ADD 1, are indicated as follows:
 - deleted text is marked in ~~striketrough~~;
 - new text is marked in **bold and underlined**.
 10. Against this background, COREPER is invited to confirm the changes set out in the Annex to this note.

**Proposal for a
Directive of the European Parliament and of the Council
laying down standards for the reception of applicants for international protection (recast)**

...

Revise Recital 42a as follows:

(42a) The possibility of abuse of the reception system should also be restricted by specifying the circumstances in which material reception conditions may be reduced or withdrawn. Member States should be able to reduce or withdraw the daily expenses allowance or, where duly justified and proportionate, reduce other material reception conditions where certain conditions are met, including where the applicant does not cooperate with the competent authorities or does not comply with the procedural requirements set by them. This should apply in particular where an applicant fails to attend fixed appointments or comply with reporting duties for reasons which are not beyond his or her control; fails to lodge his or her application in accordance with the requirements of the Asylum Procedures Regulation despite having had an effective opportunity to do so; or fails to respect requests to provide information in order to facilitate the identification process, including by refusing to provide biometric data or necessary contact information or by refusing to co-operate during medical screening procedures. Member States should also, where duly justified and proportionate, be able to withdraw material reception conditions in cases where the applicant has seriously or repeatedly breached the rules of the accommodation centre or behaved in a violent or threatening manner in the accommodation centre. Member States should **be able to reduce or withdraw material reception conditions down to a level that ensures** always ensure a minimum standard of living for all applicants in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations, taking into account applicants with special reception needs and the best interests of the child.

Revise paragraph 2 of Article 6b as follows:

Article 6b

Allocation of applicants to a geographical area

- "2. Allocation in accordance with paragraph 1 may only be applied for the purpose of ensuring swift, efficient and effective processing of applications in accordance with the Asylum Procedure Regulation, **effective monitoring of applications** or geographic distribution of applicants, taking into account the capacities of the geographical areas.

Member States shall inform applicants in accordance with Article 5 about their allocation to a geographical area, including about the geographical boundaries of this area. "

Revise paragraph 2 of Article 11 as follows:

Article 11

Detention of applicants with special reception needs

- "2. Minors shall, as a rule, not be detained. They shall instead be placed in suitable accommodation in accordance with Articles 22 and 23.

The principle of family unit shall, generally, lead to the use of adequate alternatives to detention for families with minors. Families with minors shall be accommodated in accommodation suitable for them.

However, in exceptional circumstances, as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively, and after **the best interests of the child have been given primary consideration** ~~detention is assessed to be in their best interests~~ in accordance with Article 22, minors may be detained:

- (a) in case of accompanied minors, where the minor's parent or primary care-giver is detained; or
- (b) in case of unaccompanied minors, **only** where it ~~safeguards~~ **is provided that the safety and well-being of** the minor **are guaranteed**.

Such detention shall be for the shortest possible period of time, and never in prison accommodation or another facility for law enforcement purposes. All efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The best interests of the child, as referred to in Article 22(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the right to education in accordance with Article 14, unless the provision of education is of limited value to them due to the very short period of their detention. They shall also have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age."

Revise recital 30b and paragraph 1 of Article 23 as follows:

(30b) Until the representative is designated, Member States should designate a person **with the necessary skills and expertise** ~~suitable~~ to provisionally **assist the minor in order to safeguard his or her best interest and general well-being which enables the minor to benefit from the rights** ~~act as a representative~~ under this Directive. This person might be for example an employee of a reception centre, of a child care facility, of social services, or of another relevant organisation designated to carry out this task. Persons whose interest conflict or could potentially conflict with those of the unaccompanied minor should not be designated to provisionally **assist the minor** ~~act as a representative~~. It is also important that this person is immediately informed when an application is made by an unaccompanied minor.

Article 23

Unaccompanied minors

1. Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, **and who is unaccompanied**, Member States shall designate:
 - (a) a person ~~who is suitable to~~ **with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interest and general well-being which enables the minor to benefit from the rights** ~~provisionally act as representative~~ under this Directive until a representative has been designated;

- (b) a representative to carry out the tasks referred to in Article 2 (12), as soon as possible but no later than within fifteen working days from when the application is made.

The representative and the person referred to in point (a) shall meet with the unaccompanied minor and take into account the minor's own views about his or her needs.

Where a Member State has assessed that an applicant who claims to be a minor is without any doubt above the age of eighteen years, it need not designate a representative in accordance with the first sub-paragraph.

Member States shall include in their contingency plans referred to in Article 28, measures to be taken to ensure the designation of representatives and **persons provisionally assisting the minors** ~~persons provisionally acting as representatives~~ in accordance with this Article in cases where the Member State is confronted with a disproportionate number of unaccompanied minors.

Where the implementation of measures referred to in the first subparagraph is insufficient to respond to a disproportionate number of applications made by unaccompanied minors, or in other exceptional situations, the designation of representatives can be delayed for further ten working days and the number of unaccompanied minors per representative may be increased, up to a maximum of fifty unaccompanied minors, where needed.

When applying the previous sub-paragraph Member States shall inform the Commission and the European Union Agency for Asylum.

The duties of the representative shall cease where the competent authorities, following the age assessment referred to in [Article 24(1) of Regulation (EU) XXX/XXX (Asylum Procedures Regulation)], do not assume that the applicant is a minor or consider that the applicant is not a minor, or where the applicant is no longer an unaccompanied minor.
