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EUROPEAN COMMISSION

Brussels, 5.3.2010  
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2009/0027 (COD)  
2009/0026 (COD)

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the position adopted by the Council with a view to the adoption of a proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office and a proposal for a Decision of the European Parliament and of the Council amending Decision 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions**

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**1. BACKGROUND**

Date of transmission to the European Parliament and to the Council of the proposal for a Regulation establishing a European Asylum Support Office [(COM(2009) 66 final - 2009/0027(COD))]: 19 February 2009

Date of transmission to the European Parliament and to the Council of the proposal for a Decision of the European Parliament and of the Council amending Decision 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions [COM(2009)67 - 2009/0026(COD)]: 18 February 2009

Date of the opinion of the European Economic and Social Committee: Not applicable

Date of the opinion of the European Parliament, first reading: 7 May 2009

Date of transmission of the amended proposal: Not applicable

Date of adoption of the Council's position: 25 February 2010

**2. PURPOSE OF THE COMMISSION PROPOSAL**

The proposal for a Regulation establishing the European Asylum Support Office and the proposal to amend the Decision establishing the ERF 2008-2013 are part of the European Union's efforts to develop a comprehensive asylum policy. They are a response to the requests from the Council and the European Council for the creation of an asylum support structure and form part of the measures announced by the Policy Plan on Asylum adopted by the Commission in June 2008. The Commission proposes to set up a European Asylum Support Office which will be responsible for promoting and enhancing practical cooperation between Member States on asylum matters and for helping to support the implementation of the

common asylum system. The Office's institutional status will be that of a regulatory agency and it will be a body set up as provided for in Article 185 of the Financial Regulation. Its funding will come from a heading in the general budget of the European Union. In the interests of simplifying the use of available funds, and because the European Asylum Support Office will be responsible for some of the tasks currently funded under the ERF, the proposal for a Decision transfers some of the budgetary resources currently allocated to the ERF to the Office, in order to ensure the optimal financing of practical cooperation on asylum matters.

### **3. COMMENTS ON THE COUNCIL'S POSITION**

#### **3.1 General Comment on the Council's Position**

The substance of the Council's Position is, broadly in line with the Commission's proposals and can therefore be supported fully.

#### **3.2 Agreement at the stage of the Council's position**

The Council's position is the result of intensive inter-institutional negotiations, following the Commission's proposal of 18 February 2009 and the adoption by the European Parliament of its opinion at first reading 6 May 2009. Informal and technical meetings have resulted in compromise on a number of outstanding issues. Neither the European Parliament nor the Council amended the proposal for a Decision on the funding of the Office.

Following these negotiations, Coreper reached agreement on the text on 11 November 2009. On 16 November 2009 the Chairman of the LIBE Committee, Mr Juan Fernando López Aguilar, sent a letter to the Presidency confirming the agreement of the rapporteurs and the rapporteurs for opinion on the text approved by Coreper and on the Interinstitutional statement annexed to it, and stating that if these texts were formally transmitted to the European Parliament as the Council's position, he would recommend that the Members of the LIBE committee and subsequently the plenary session accept them without amendments. Coreper reached a political agreement on this basis on 20 November 2009.

The main points which were negotiated and agreed upon are set out below.

The solidarity mechanisms supported by the Office (relocation and resettlement) were the subject of a compromise based on neutral wording to allow the Office to support all present or future mechanisms effectively.

A compromise was reached regarding the appointment of the Executive Director of the Office, by which Parliament was accorded a significant role in the appointment by allowing it to adopt an opinion after hearing the candidate designated by the Management Board and requiring the Management Board to inform Parliament of the manner in which its opinion was taken into account in the definitive appointment of the Executive Director. Parliament wanted this across-the-board provision on institutional status to be fully in line with the work currently under way in the Interinstitutional Working Group on Regulatory Agencies. The following interinstitutional statement was consequently adopted:

*"The European Parliament, the Council and the Commission set up an Inter-institutional Working Group to assess the coherence, effectiveness, accountability and transparency of Regulatory Agencies, and to find common ground on how to improve their work. The Working Group is currently focusing on a number of key areas such as the role and position of*

*Regulatory Agencies in the EU's institutional landscape, their creation, structure and operation, and issues related to their funding, budgetary, supervision and management.*

*The formula agreed for the nomination of the Director of the future European Asylum Support Office (Article 28 of the basic regulation), providing that the European Parliament "may adopt an opinion setting out its view of the selected candidate and the Management Board shall inform the EP of the manner in which its opinion has been taken into account" should be seen in the context of the inter-institutional efforts to improve the governance and accountability of agencies."*

The Council and the European Parliament have reached an agreement which allows the United Nations High Commission for Refugees (UNHCR) to participate in the work and to allow the Office to benefit fully from UNHCR's expertise in the course of its future work.

At Parliament's request, a compromise was found to associate civil society fully with the work of the Office by means of a Consultative Forum, the operational rules for which were laid down.

#### **4. CONCLUSION**

The Council's position and the interinstitutional statement annexed to it meet the aims of the Commission's initial proposal. The Commission therefore supports the text.