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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) - Conditional confirmation of the final compromise text with a view to agreement

1. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (thereafter "the Directive") ensures standards of reception conditions throughout the Union. It ensures that applicants have access to housing, food, clothing, health care, education for minors and access to employment, etc. under certain conditions. The Directive also provides particular attention to vulnerable persons, especially minors.

The recast of the Directive aims at providing further harmonisation in this area, building on the experience of the implementation of the existing Directive, which entered into force in 2015. One of the main objectives of the recast as part of the overall reform of the Common European Asylum System (CEAS) is to limit secondary movements through introducing more harmonised standards of reception and allowing for clearer rules as regards the organisation of reception systems and the rights and obligations of the applicants for international protection.

2. The text of the Directive has been the subject of extensive discussions at technical level in the framework of the Asylum Working Party, which completed a first round of negotiations, and at JHA counsellors level. The Permanent Representatives Committee granted a mandate to start negotiations with the European Parliament on 29 November 2017 (see 14779/17).
3. Eight trilogues have been organised, respectively on 12 December 2017, 18 January 2018, 22 February 2018, 27 March 2018, 17 April 2018, 15 May 2018, 6 and 14 June 2018 as well as numerous technical meetings and drafting sessions. Negotiations have been long and complex, with rather diverging positions of the Council and of the European Parliament on several issues. Most of the meetings between the Council and the European Parliament focused on developing compromise suggestions aimed at bridging the positions of the two co-legislators, sometimes fundamentally different.
4. The delegations have been briefed at all stages of the negotiations on the possible compromises that the Council could be in a position to make in order to preserve all its red lines throughout the text.
5. At the last trilogue on 14 June 2018, a provisional political compromise was reached. The Presidency believes that the text as proposed in the addendum represents a fair and balanced compromise between the co-legislators, preserving the issues to which the Council attaches special importance.
6. In particular, the Presidency managed to secure an agreement based almost entirely on the Council position on many provisions of crucial importance to the Member States on which the European Parliament had strong reservations on substance throughout the negotiations, in particular:

- Definitions of absconding and risk of absconding (Article 2 (10) and (11));
 - Optional provision for issuing travel documents to applicants (Article 6);
 - Allocation of applicants to geographical areas within the territory of the Member States without any administrative or judicial decision (Article 6b);
 - Possibilities to restrict equal treatment of applicants with nationals with regard to applicants' access to the labour market, including education and vocational training, recognition of professional qualifications and social security (Article 15);
 - Withdrawal of reception conditions for applicants who are found in a Member State other than the one in which they are required to be present (Article 17a);
 - Possibility of reducing or completely withdrawing all material reception conditions under certain conditions (Article 19);
7. In addition, on several issues the Presidency managed to secure compromise texts in which the most important elements of the Council position are preserved, in particular with regard to:
- *Ordering of detention by administrative authorities (Article 9)*

Initially the European Parliament was strongly against any possibility to detain applicants on the basis of administrative decision insisting that detention of persons can be ordered only by judicial authorities. The Presidency managed to convince the Parliament that detention of applicants should be possible on the basis of administrative decision as long as there is judicial review provided for within the Directive. Moreover, the Parliament agreed with a compromise suggestion introducing alternative options of judicial review: either through appeal by the applicant or through ex-officio judicial review within a certain deadline. The compromise for a concrete deadline (15 days and 21 days) is based on the current practices of the Member States while also taking into consideration the recent case-law of the European Court of Justice.

– *Detention of minors (Article 11 (2))*

While neither the Commission original proposal, nor the Council position envisaged changing the current provisions on detention of minors, the European Parliament led by the understanding that detention is always harmful to minors, requested an overall deletion of such a possibility, introducing only alternatives to detention. After intensive discussions the European Parliament agreed that detention cannot be excluded and accepted a text similar to the existing *acquis*, where all the grounds for detention established in Article 8 are applicable also in the case of detention of minors. In addition, both the current provision as well as the newly agreed one provide that detention of minors should be: (1) a measure of last resort; (2) used only if other less coercive alternative measures cannot be applied effectively; (3) used only in exceptional circumstances. Thus the only new element introduced in the text during the negotiations is the reference to the safeguarding of the minor which represents a direct obligation stemming from Article 24(2) of the European Union Charter of Fundamental Rights: *In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.* In light of this, the above mentioned element only repeats an existing obligation without changing the current paradigm.

– *Daily expenses allowances (Article 2 (7a))*

The European Parliament had a strong position on keeping the original Commission proposal providing daily expenses allowance to applicants in the form of a monetary amount in order to ensure a minimum autonomy to the applicants, while the Council position envisaged the possibility to give the daily allowances either in kind, or in monetary amount, or in vouchers, or as a combination of those. The compromise reached after several rounds of negotiations allows Member States to provide a part of the daily expenses allowance in kind and another part as a monetary amount without specifying neither the starting moment for providing the monetary amount, nor the exact part that it should constitute. Moreover, the compromise under this provision ensured the agreement of the Parliament to all the red lines of the Council on Article 15 (Access to the Labour Market), including the exceptions to the equal treatment with nationals which the Council introduced therein.

– *Representatives for unaccompanied minors (Article 23)*

As regards the unaccompanied minors the European Parliament accepted the Council position as regards the figure of representative as opposed to a guardian, as well as the deadlines for his/her appointment (15 working days plus 10 additional working days in case of disproportionate pressure). In order to secure these red lines for the Council the final deal included introducing a maximum number of unaccompanied minors to be allocated to one representative. While the European Parliament insisted on having limitation set at the maximum of twenty unaccompanied minors per one representative in all circumstances, the Presidency managed to ensure that the number will be thirty unaccompanied minors under normal circumstances and fifty in case of disproportionate pressure providing that it is applicable only for natural persons.

8. In order to ensure this result, the Presidency compromised on some issues of fundamental importance to the European Parliament, in particular concerning issues related to the well-being of minors and applicants` efficient adaptation within the asylum procedure. At the same time, the Presidency managed to ensure also on these issues a more acceptable outcome compared to the original position of the European Parliament, in particular concerning:

– *Language courses and vocational training (Article 15a)*

While the European Parliament insisted on introducing absolute obligation for providing language courses and vocational training, the final compromise text introduces discretion for the Member States to provide only the courses which they would consider necessary.

9. The Presidency considers that the text agreed is balanced, maintains the essential elements of the Council position and ensures the best possible outcome for the Council.
 10. Against this background, COREPER is invited to confirm the agreement on the compromise texts negotiated with the European Parliament (Addendum 1), on with the understanding that:
 - the current directive is part of the overall CEAS package and the final agreement will be subject to additional confirmation;
 - the bracketed provisions which contain links to other CEAS files, need to be discussed and agreed with the European Parliament at a moment when the negotiations on other CEAS files have reached a stage which allows to finalise the text of these provisions.
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