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NOTE

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to: Permanent Representatives Committee/Council
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= State of play/guidance on further negotiations on CEAS

Gaining momentum in negotiations on the CEAS

Progress under the Polish Presidency

As was restated in the European Council Conclusions of 24 June 2011, negotiations on the Common European Asylum System are to be completed by the end of 2012. In order to ensure that this deadline is met, the Polish Presidency is leading intense negotiations within the Council on all the components of the package.

After significant progress on the Qualifications Directive under the Hungarian Presidency, work is now focussing on reaching a general agreement with the European Parliament on the question of correlation tables.

A first reading at expert level of the revised recast of the Reception Conditions Directive has been completed. A second reading will begin in the course of September on the basis of Presidency compromise proposals. The first reading at expert level of the revised recast of the Asylum Procedures Directive will be completed in September. Opening strategic discussions of both proposals have also taken place, leading to the identification of key issues.

Furthermore, the Presidency has initiated a discussion of the horizontal aspects of the CEAS, ensuring that the Council ensures its overall coherence.

At the informal meeting of Ministers of the Interior in Sopot in July, a first exchange of views was held on the way to move ahead in the negotiations on the CEAS. The debate focussed on ways of progressing on the Dublin and Eurodac Regulations. Indeed, In order for these instruments to be adopted, it is first necessary to address the political question surrounding the proposed emergency mechanism for the transfer of asylum seekers on the basis of the Dublin Regulation and the need for law enforcement agencies to have to access the Eurodac database.

The purpose of the present discussion is to build on the fruitful exchange of views in Sopot and to seek the guidance of the Council on two significant questions arising from negotiations on the asylum package connected to that debate. The answers to the questions will allow the Presidency to move ahead on all the instruments of the asylum package that have been proposed by the Commission.

The new challenge - preventing and managing asylum crises

Recent events as well as the case law of European courts have shown that the CEAS must be designed in such a way as to enable Member States to withstand particular pressure on their asylum systems, which remains difficult for Member States' administrations to manage for a certain period of time.

As far as the adoption of internal rules is concerned, there are two facets to the response the Union should provide to this challenge. First, the Union should possess mechanisms that ensure that such situations are prevented and do not develop into crises. Second, the Union should adopt measures that allow it to manage asylum crises which cannot be prevented.

Preventing asylum crises

In order to prevent asylum crises, the Union needs to have measures relating to early warning and preparedness at its disposal. The Union does possess tools in this regard - the development of EASO activities, the work of FRONTEX and the operation of the European Refugee Fund - serve to raise awareness and boost capacity.

The preparedness of the Union for asylum crises should nonetheless be enhanced. This could be done through the establishment of a mechanism that would evaluate the way in which the Member States apply the asylum *acquis* and in particular whether they possess the necessary capacity to deal with increased pressure.

A number of difficult issues related to such an initiative can be identified. These include financing, the respective roles of the Member States, EASO and the Commission in the evaluation process as well as the issue of the consequences of non-compliance with recommendations. It is important that the Union be prepared to tackle these issues because an early warning and preparedness system comprising an evaluation mechanism would be an asset to the Union.

First and foremost, it would help to build trust between the Member States by ensuring that the asylum systems of the Member States are monitored and that shortcomings are identified at an early stage. The Member State concerned could be assisted in the development of an action plan, the implementation of which would be monitored and evaluated. Such a system would complement the Union's other instruments, guiding the operational assistance programs EASO is able to provide and ensuring that European Refugee Fund resources are directed appropriately.

Managing asylum crises

The management of asylum crises involves the adoption of targeted measures serving to quickly restore the ability of the Member State(s) concerned to carry out asylum procedures and maintain reception conditions. Again, both EASO's long term actions and the European Refugee Fund are relevant in this regard.

A further element of solidarity that has been envisaged vis-à-vis a Member State subjected to severe migration pressure impacting on its asylum system is an emergency mechanism leading to the suspension of certain transfers under the Dublin Regulation to that Member State. Such a measure would only be applied as a last resort.

The purpose of such a mechanism is to ensure that an unmanageable burden faced by a Member State is not increased through the operation of the Dublin Regulation. This issue has also been the subject of significant debate in the light of the case law of the European Court of Human Rights.

Questions

On the basis of these considerations, Ministers are invited to address the following questions:

1/ Should the Union's early warning and preparedness capacity for asylum crises be strengthened through the establishment of a system of asylum evaluation?

2/ Should the Union's asylum crisis management capacity be complemented by an emergency mechanism leading, as a last resort, to the suspension of transfers under the Dublin Regulation?