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From: Presidency

To: Permanent Representatives Committee/Council

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Subject:

- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] , for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)
- Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

= Policy debate

EURODAC REGULATION

1. On 4 May 2016, the Commission submitted a proposal for a recast of the Eurodac Regulation¹. The proposal includes the necessary changes to adapt and reinforce the Eurodac system in accordance with the new Dublin rules and to expand its purpose to help tackle irregular migration and facilitate returns.

¹ doc. 8765/1/16 REV 1

2. At its meetings on 26 May, 14 June and 14 July, the Asylum Working Party examined in detail the proposal as well as Presidency compromise suggestions reflecting the comments made. While many delegations still have scrutiny reservations, they expressed broad support for the objectives of the proposal to extend its scope by including the possibility for Member States to store and search data belonging to persons who are not applicants for international protection so that they can be identified for return and readmission purposes.
3. One of the issues which require further examination and guidance includes the conditions for access of law enforcement authorities to Eurodac.

The 2013 Eurodac Regulation introduced access to the database by law enforcement authorities for the prevention, detection and investigation of terrorism and other serious offences. The data in Eurodac is available, subject to the conditions set out in the Regulation, for comparison by the designated authorities of Member States and Europol.

While the provisions relating to the law enforcement access have not been amended in the proposal, recital 14 refers to the work of the Expert Group on Information Systems and Interoperability, set up on the basis of the Commission's Communication on Stronger and Smarter Information Systems for Borders and Security², which should, among others, examine if there is a need to revise the legal framework for law enforcement access to Eurodac. Attention has also been drawn to the Roadmap³ which contains actions to enhance information management and information exchange in the JHA area.

It has been clear during examinations undertaken so far, including at the SCIFA meeting on 13 September⁴, that many Member States are in favour of a simplified and broader access of law enforcement authorities to Eurodac so that the data can be used for the prevention of terrorism and other related security threats in the most efficient way. The access according to the current rules is considered complicated and the list of authorities authorised to have access too restrictive.

² doc. 7644/16

³ Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area (9368/1/16 REV 1)

⁴ doc. 11943/16

4. The Presidency would like to invite the Council to confirm its support for a broader and simplified access of law enforcement authorities to Eurodac and to invite its preparatory bodies to examine ways for making the appropriate changes in the proposal.

Taking into account in particular that such broadened and simplified access for law enforcement purposes needs to be proportionate and necessary, Ministers are invited to indicate the scope and conditions of such changes, which in their opinion should be introduced in the above Commission proposal.

REGULATION ON THE EUROPEAN UNION AGENCY FOR ASYLUM

5. On 4 May 2016, the Commission also adopted a proposal for the Regulation on the European Union Agency for Asylum⁵. The proposal aims to strengthen the role of EASO and develop it into an Agency which facilitates the implementation and improves the functioning of the Common European Asylum System (CEAS). The Agency is one of the tools that can be used to address effectively the structural weaknesses of the CEAS that have been further exacerbated by the recent large-scale arrival of migrants and asylum seekers to the EU.
6. Detailed examination of the proposal by Member States started at the Asylum Working Party meeting on 15 June and continued on 6 and 29 September, during which Member States completed the first round of examination on the entire proposal. While a large majority of Member States welcomed the general aim of the proposal to strengthen the role of EASO, it is clear from the discussions that several aspects of the proposal need further clarification.

⁵ doc. 8742/16 + ADD 1

7. Member States expressed a number of concerns regarding in particular the mechanism for monitoring and assessing the asylum and reception systems of Member States that the Agency is tasked to establish (Articles 13 to 15). Several Member States expressed the view that the role suggested to the proposed Agency in this respect would be too broad and that it would overlap with the powers of the Commission. In addition, several Member States considered that they should have a greater role in the monitoring exercise. This issue was also discussed at a meeting of SCIFA on 13 September. It emerged from these discussions that the majority of delegations could accept that the Agency has a limited role in monitoring while emphasising that the Agency should retain its primary role of providing support to Member States.
8. In order to receive further guidance on this issue, the Presidency would like Ministers to reply to the following question:
- do you agree that the monitoring mechanism for the future EU Agency for Asylum could be similar to the vulnerability assessment as laid down in the European Border and Coast Guard Regulation allowing the EU Agency for Asylum to regularly monitor the practical application of the CEAS and the capacity of Member States to carry out related tasks?