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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

To: Delegations

Subject: Common Understanding establishing a governance and conditionality framework for the Refugee Facility for Turkey

Delegations will find in the Annex the Common Understanding establishing a governance and conditionality framework for the Refugee Facility for Turkey, as agreed by the Commission and the Representatives of the Governments of the 28 Member States meeting in the Permanent Representatives Committee at its 2572nd meeting held on 3 February 2016.

**COMMON UNDERSTANDING ESTABLISHING A GOVERNANCE AND
CONDITIONALITY FRAMEWORK FOR THE REFUGEE FACILITY FOR TURKEY,
THE "FACILITY",**

Hereinafter referred to as "the Common Understanding"

between

EU Member States (hereinafter the "Member States")

and

The European Commission (hereinafter the "Commission")

Noting the following:

- A. The representatives of the Governments of the 28 Member States ("Representatives") committed, as stated at the meeting of the Heads of State or Government with Turkey on 29 November 2015, to provide an initial EUR 3 billion of additional resources to support refugees under temporary protection and host communities in Turkey.
- B. Those additional resources will be provided by means of pooling financing from the Union budget with national contributions made separately by the Member States, jointly coordinated under a mechanism, the Refugee Facility for Turkey (the "Facility").
- C. Due to the exceptional circumstances, Member States will make contributions to the EU budget in the form of external assigned revenues, pursuant to Article 21(2)(b) of the Financial Regulation. The formalisation of the arrangements will be concluded on a separate basis between the respective Member State and the Commission and structured in such a manner as not to be subject to national constitutional requirements for the ratification of international Treaties, it is important to establish the framework for the Facility, in particular as regards its governance and the conditionality for executing assistance actions coordinated thereunder.

- D. It is understood that the contributions to the Facility and the formalisation thereof are conditional upon strict compliance with the governance and conditionality framework set out in this Common Understanding and any additional conditions defined therein.

The Member States and the Commission are understood as follows:

GENERAL ASPECTS

1. The Facility shall have a purely coordinating function. The objective of the Facility is to ensure a proper coordination and streamlining of actions financed with financial contributions from Member States and actions financed from the general budget of the Union which aim at assisting Turkey in addressing the immediate humanitarian and development needs of the refugees and the host communities, national and local authorities in managing the inflow of refugees, with a view to enhancing the efficiency and complementarity of such support provided to refugees and host communities in Turkey.¹
2. On the basis of the guidance established within the Facility, the Commission shall be responsible for managing the respective contributions in compliance with the applicable rules and procedures, notably the Financial Regulation², its Rules of Application³ and the relevant EU legislation providing the legal basis for the respective actions and their implementation.
3. The Facility, and notably its Governance Structure, shall not encroach upon the competences of the budgetary authority of the Union nor upon those of the Commission as the institution in charge of implementing the budget.
4. The Facility shall have no legal personality.

¹ The general framework elaborates on and fully respects the Terms of Reference endorsed by the Representatives of the Governments of the 28 Member States on 3 February 2016.

² Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p. 1).

³ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (OJ L 362 of 31.12.2012, p. 1).

GOVERNANCE

5. The Facility shall be led by a Steering Committee with the following main tasks:
- i) to provide strategic guidance on the overall priorities and on the types of actions to be supported, on the instruments to be used for the efficient implementation of the action, and on the coordination of the actions;
 - ii) to permanently monitor and assess the implementation of the actions coordinated under the Facility, including respect of the conditionality requirements, having regard to the assessments carried out by the structures established with the purpose of monitoring progress in the implementation of the commitments reflected in the understanding between the European Union and the Republic of Turkey to step up their cooperation in a coordinated effort to address the crisis (the "EU-Turkey Joint Action Plan" activated on the 29th of November 2015
 - iii) to examine the payment forecasts relating to the implementation of actions submitted by the Commission and, where appropriate propose that the Commission defer all or part of the call related to one or more later instalments due;
 - iv) to monitor contributions made by Member states recalling the agreed amount of EUR two billion.

Additional accessory tasks may be defined in the Rules of Procedure of the Steering Committee.

6. The Steering Committee shall be composed of one representative of each Member State and two representatives of the Commission. The Commission shall have a leading role in coordinating and steering the work of the Steering Committee. The Commission shall chair the Steering Committee.

7. Turkey shall be invited to take part in the meetings of the Steering Committee in an advisory capacity, where necessary to ensure full coordination of the actions on the ground. Turkey shall not participate in the Steering Committee when matters relating to the monitoring of implementation and the respect of conditionality requirements are being discussed. The specific cases shall be defined in the Rules of Procedure of the Steering Committee.
8. Each Member State shall have one vote in the Steering Committee. The Commission, as chair of the Steering Committee, shall have two votes. The Steering Committee shall strive at reaching consensus whenever possible, failing which it shall vote by simple majority of its members.
9. The Commission shall have a right to veto strategic guidance by the Steering Committee with the sole aim of ensuring the legality of any subsequent decision, including its compatibility with its responsibility for implementing the Union's budget. Where the Commission intends to use this right, it shall justify, upon request, why a draft decision would be inconsistent with any of the aforementioned requirements.
10. Upon a proposal by the Commission, the Steering Committee shall draw up and adopt its Rules of Procedure before any assistance actions using national contributions are executed. It shall also draw up rules on the confidentiality of information shared within the Facility.
11. The Commission shall provide the Secretariat of the Facility.
12. The Commission may undertake any necessary coordination actions, other than those expressly attributed to the Steering Committee, in accordance with its competences as laid down in the Treaties. The Commission shall provide the members of the Steering Committee with detailed information on the implementation of the actions coordinated under the Facility and, more particularly, inform them without delay of any circumstances likely to hamper or delay the implementation of those actions.

CONTRIBUTIONS FROM MEMBER STATES

13. Contributions from Member States shall be made pursuant to a contribution certificate and shall be included into the general budget of the Union as external assigned revenue in accordance with Article 21(2)(b) of the Financial Regulation.
14. By delivery of the signed contribution certificate to the Commission, the Member State undertakes to make the contribution described therein available in accordance with the payment schedule contained therein.
15. Following receipt of a signed contribution certificate the Commission shall issue a statement acknowledging receipt. By issuing such a statement, the Commission acknowledges its responsibility to use the funds in full compliance with this Common Understanding.

MANAGEMENT OF THE CONTRIBUTION BY THE COMMISSION

16. The Commission shall issue debit notes to Member States in accordance with the payment schedules contained in the individual contribution certificates referred to in point 13, and having regard to real disbursement needs. The contributions, or instalments thereof, shall be transferred within 45 days of the date of the debit note issued by the Commission, into the account indicated in that note. The total amount requested may under no circumstances exceed the contribution set out in the contribution certificate.
17. The Commission shall manage Member States' contributions with the purpose of financing the actions referred to in point 1, coordinated under the Refugee Facility for Turkey.¹
18. The Commission shall manage the amounts coordinated under the Facility in compliance with the Financial Regulation and legal provisions applicable to the expenditure of the European Union, including those set out in point 2 of this Common Understanding, with the requisite degree of care, efficiency, transparency and diligence, as required by best practice in the field concerned, and in compliance with this Common Understanding.

¹ The delivery of the assistance will be made in accordance with ODA.

19. The Commission shall have the sole responsibility for complying with any legal obligation incumbent on it. Member States may not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Commission while the actions are being carried out or as a consequence of the actions. Therefore, Member States may not accept any claim for compensation or increases in payment in connection with such damage or injury, except for non-compliance with the contractual obligations by Member States.
20. Subject to the rules governing the Commission's privileges and immunities, the Commission shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the actions co-financed under this Common Understanding. The Commission shall discharge Member States of all liability associated with any claim or action brought as a result of an infringement by the Commission or the Commission's staff or individuals for whom these are responsible of rules or regulations, or as a result of violation of a third party's rights.
21. The Commission shall take appropriate measures to prevent irregularities or fraud, as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests of 26 July 1995¹, as well as corruption, as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union of 26 May 1997².
22. The Commission shall take appropriate measures against any person who is suspected of misuse of funds or corruption.
23. The Commission shall forward to the European Anti-Fraud Office (OLAF) without delay any information relating to possible cases of fraud or corruption or any other illegal activity linked to this Common Understanding and shall inform Member States about this transmission.

¹ OJ C 316, 27.11.1995, p. 48.

² OJ C 195, 25.6.1997, p. 1.

CONDITIONALITY

24. The execution of assistance actions under the Facility shall be conditional upon strict compliance by the Republic of Turkey with undertakings reflected in the EU-Turkey Joint Action Plan and the EU-Turkey Statement from 29 November 2015.
25. In order to ensure respect of the conditionality framework described in point 24, the speed of the delivery of the assistance actions shall be reviewed by the Commission in the light of Turkey's implementation of the EU-Turkey Joint Action Plan, on the basis of the monitoring and the assessments carried out by the Steering Committee pursuant to point 5 ii).

EVALUATION AND INFORMATION

26. The Commission shall provide Member States with regular information on the implementation of the actions covered by this Common Understanding.
27. The Commission shall ensure that progress and situation reports, publications, press releases and updates, relevant to the actions covered by this Understanding, are communicated to the Steering Committee as and when they are issued.
28. In any event the Commission shall inform Member States without delay of any circumstances likely to hamper or delay the implementation of the actions covered by this Common Understanding.

REIMBURSEMENT OF CONTRIBUTIONS

Exceptional circumstances

29. In the event that the Steering Committee, in the context of its monitoring pursuant to point 5 ii), establishes that the conditions relating to the implementation by Turkey of its commitments under the EU-Turkey Joint Action Plan are not respected, the Commission shall stop undertaking any new legal obligations attributable to the Facility, and debit notes referred to in point 16 shall only be further issued to the extent necessary to cover legal commitments already entered into by the Commission. The Steering Committee may discuss the suspension of financing upon request of a Member State.

30. If, following the further monitoring pursuant to point 5 ii), the Steering Committee establishes that the conditions relating to the implementation by Turkey of its commitments under the EU-Turkey Joint Action Plan are again respected, the issuance of debit notes referred to in point 16 may resume in accordance with the respective payment schedules provided under the individual contribution certificates.
31. In the event that the delivery of the assistance actions coordinated under the Facility cannot continue, due to force majeure the Commission shall stop undertaking any new legal obligations attributable to the Facility, and debit notes referred point 16 shall only be further issued to the extent necessary to cover legal commitments already entered into by the Commission.
32. In the event that the execution of assistance actions coordinated under the Refugee Facility for Turkey are definitively brought to an end on the grounds set out in points 29 or 31, the Commission shall return to the Member States the amounts of their contribution already called for and not subject to a legal commitment. The general budget of the European Union shall only be reimbursed if any amount is left after Member States have been reimbursed.

Reimbursement of unused funds

33. At the latest six months after the end of the period referred to under point 42, the part of the contribution of each Member State not committed and the related payments collected shall be reimbursed to the Member State. The general budget of the European Union shall only be reimbursed if any amount is left after Member States have been reimbursed.

FINAL PROVISIONS

Jurisdiction and applicable law

34. This Common Understanding is governed by EU law, and, on a subsidiary basis, by Belgian law.

35. The Parties shall enter into consultations at the request of either one of the Parties should any dispute arise concerning the interpretation, application or fulfilment of this Common Understanding.
36. If these consultations fail to amicably resolve such a dispute to the satisfaction of both Parties, any of them may refer the matter to the Court of Justice of the European Union, pursuant to Article 272 of the Treaty on the Functioning of the European Union.
37. Nothing in this Common Understanding shall be interpreted as a waiver of any privileges or immunities accorded to the Parties hereto by its constituent documents or international law.

Accounting and Auditing

38. The Commission shall keep accurate and regular records and accounts of the implementation of the actions financed by the contributions, in accordance with the rules and procedures governing its accounts under the financial rules referred to in point 2.
39. The contributions under this Common Understanding shall be subject to internal and external auditing procedures laid down in the financial rules referred to in point 2.

ENTRY INTO FORCE

40. This Common Understanding is immediately operational. The Commission shall commence to commit the contributions transferred by Member States when contribution certificates notified to the Commission reach a total amount of EUR 1 billion or by the 31st of March 2016 whichever is earlier.
41. The Commission may only undertake commitments until 31st of December 2017, payments to honor these legal commitments may be made until 31st of December 2019.
42. Audit and evaluation of the Facility may be carried out up to 2020.