Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office

REGULATION (EU) No 439/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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establishing a European Asylum Support Office

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and Article 78(1) and (2) thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The policy of the Union on the Common European Asylum System (the CEAS) is designed, under the terms of the Hague Programme, to establish a common asylum area by means of an effective harmonised procedure consistent with the values and humanitarian tradition of the European Union.

(2) Much progress has been made in recent years towards the establishment of the CEAS thanks to the introduction of common minimum standards. There remain great disparities between the Member States, however, in the granting of international protection and the forms that such international protection takes. Those disparities should be reduced.

(3) In its Policy Plan on Asylum, adopted in June 2008, the Commission announced its intention to develop the CEAS by proposing a revision of existing legal instruments in order to achieve greater harmonisation of the applicable standards and by strengthening support for practical cooperation between the Member States, in particular by a legislative proposal to establish a European Asylum Support Office (the Support Office) in order to increase coordination of operational cooperation between Member States so that the common rules are implemented effectively.

(4) In the European Pact on Immigration and Asylum, adopted in September 2008, the European Council solemnly reiterated that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and other relevant treaties. It was also expressly agreed that a European support office would be established in 2009.

(5) Practical cooperation on asylum aims to increase convergence and ensure ongoing quality of Member States' decision-making procedures in that area within a European legislative framework. A substantial number of practical cooperation measures has

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already been undertaken in recent years, notably the adoption of a common approach to information on countries of origin and the establishment of a common European asylum curriculum.

(6) The Support Office should be established in order to strengthen and develop those cooperation measures. The Support Office should take due account of those cooperation measures and the lessons learnt therefrom.

(7) For Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographic situation, the Support Office should support the development of solidarity within the Union to promote a better relocation of beneficiaries of international protection between Member States, while ensuring that asylum and reception systems are not abused.

(8) In order to best fulfil its mandate, the Support Office should be independent in technical matters and should enjoy legal, administrative and financial autonomy. To that end, the Support Office should be a body of the Union having legal personality and exercising the implementing powers conferred upon it by this Regulation.

(9) The Support Office should work in close cooperation with Member States'asylum authorities, with national immigration and asylum services and other services, drawing on the capacity and expertise of those services, and with the Commission. Member States should cooperate with the Support Office to ensure that it is able to fulfil its mandate.

(10) The Support Office should also act in close cooperation with the UN High Commissioner for Refugees (the UNHCR) and, where appropriate, with relevant international organisations in order to benefit from their expertise and support. To that end, the roles of the UNHCR and the other relevant international organisations should be fully recognised and those organisations should be fully involved in the work of the Support Office. Any financial resources made available by the Support Office to the UNHCR in accordance with this Regulation should not result in double financing of the UNHCR's activities with other international or national sources.

(11) Furthermore, to fulfil its purpose, and to the extent required for the fulfilment of its duties, the Support Office should cooperate with other bodies of the Union, in particular with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), established by Council Regulation (EC) No 2007/2004[(2)], and the European Union Agency for Fundamental Rights (FRA), established by Council Regulation (EC) No 168/2007[(3)].

(12) The Support Office should cooperate with the European Migration Network, established by Council Decision 2008/381/EC[(4)], in order to avoid duplication of activities. The Support Office should also maintain a close dialogue with civil society with a view to exchanging information and pooling knowledge in the field of asylum.

(13) The Support Office should be a European centre of expertise on asylum, responsible for facilitating, coordinating and strengthening practical cooperation among Member States on the many aspects of asylum, so that Member States are better able to provide international protection to those entitled, while dealing fairly and efficiently with

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those who do not qualify for international protection,where appropriate. The Support Office's mandate should be focused on three major duties, namely contributing to the implementation of the CEAS, supporting practical cooperation among Member States on asylum and supporting Member States that are subject to particular pressure.

(14) The Support Office should have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection.

(15) In order to provide and/or coordinate the provision of speedy and effective operational support to Member States subject to particular pressure on their asylum and reception systems, the Support Office should, at the request of the Member States concerned, coordinate action to support those Member States inter alia through the deployment in their territories of asylum support teams made up of asylum experts. Those teams should, in particular, provide expertise relating to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases. The arrangements for the asylum support teams should be governed by this Regulation in order to ensure their effective deployment.

(16) The Support Office should fulfil its purpose in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its procedures and operating methods, and its diligence in performing the duties assigned to it.

(17) The Commission and the Member States should be represented on the Management Board of the Support Office in order effectively to control its workings. The Management Board should, where possible, consist of the operational heads of the Member States' asylum administrations or their representatives. It should be given the necessary powers, in particular to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Support Office, adopt the annual report on the situation of asylum in the Union and technical documents on the implementation of the Union's asylum instruments, and appoint an Executive Director and, if appropriate, an Executive Committee. Given its expertise in the field of asylum, the UNHCR should be represented by a non-voting member of the Management Board so that it is fully involved in the work of the Support Office.

(18) Given the nature of the duties of the Support Office and the role of the Executive Director, and with a view to enabling the European Parliament to adopt an opinion on the selected candidate, before his appointment as well as before a possible extension of his term of office, the Executive Director should be invited to make a statement and to answer questions to the European Parliament's competent committee or committees. The Executive Director should also present the annual report to the European Parliament. Furthermore, the European Parliament should have the possibility to invite the Executive Director to report on the performance of his duties.

(19) To ensure the Support Office's full autonomy and independence, it should have its own budget, most of which will comprise a contribution from the Union. The financing

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of the Support Office should be subject to an agreement by the budgetary authority as set out in point 47 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management[(5)]. The budgetary procedure of the Union should be applicable to the Union's contribution and to any grant chargeable to the general budget of the European Union. The auditing of accounts should be undertaken by the Court of Auditors.

(20) The Support Office should cooperate with third-country authorities and international organisations competent in matters falling within the scope of this Regulation and third countries within the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty on the Functioning of the European Union (TFEU).

(21) In accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union (TEU) and to the TFEU, the United Kingdom and Ireland have notified their wish, by letters of 18 May 2009, to take part in the adoption and application of this Regulation.

(22) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it nor subject to its application.

(23) Considering that Denmark, as a Member State, has hitherto contributed to the practical cooperation between Member States within the area of asylum, the Support Office should facilitate operational cooperation with Denmark. To that end, a Danish representative should be invited to attend all the meetings of the Management Board, which should also be able to decide to invite Danish observers to the meetings of working parties, where appropriate.

(24) To fulfil its purpose, the Support Office should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union in the field covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland. It should also, in agreement with the Commission, be able to conclude working arrangements in accordance with the TFEU with countries other than those which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union. Under no circumstances, however, should it formulate any independent external policy.

(25) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(6)] (the Financial Regulation), and in particular Article 185 thereof should apply to the Support Office.

(26) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)[(7)] should apply without restriction to the Support Office, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament,

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the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office[(8)].

(27) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[(9)] should apply to the Support Office.

(28) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(10)] should apply to the processing of personal data by the Support Office.

(29) The necessary provisions regarding accommodation for the Support Office in the Member State in which it is to have its headquarters and the specific rules applicable to all the Support Office's staff and members of their families should be laid down in a headquarters agreement. Furthermore, the host Member State should provide the best possible conditions to ensure the proper functioning of the Support Office, including schools for children and transport, in order to attract high-quality human resources from as wide a geographical area as possible.

(30) Since the objectives of this Regulation, namely the need to improve the implementation of the CEAS, to facilitate, coordinate and strengthen practical cooperation between Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(31) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should be applied in accordance with the right to asylum recognised in Article 18 of the Charter,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

ESTABLISHMENT AND PURPOSE OF THE EUROPEAN ASYLUM SUPPORT OFFICE

Article 1

Establishment of the European Asylum Support Office

A European Asylum Support Office (the Support Office) is hereby established in order to help to improve the implementation of the Common European Asylum System (the CEAS), to strengthen practical cooperation among Member States on asylum and to