

## **Presidency progress report on key elements of a European Migration and Asylum policy and the way forward**

The European Union (EU) is facing particularly challenging times due to the ongoing efforts to control the Corona pandemic and its consequences in all areas of life. In the light of the pandemic, it falls to the EU to make decisions with a decisive impact in many future-oriented policy areas; this challenge further underlines the need for an ambitious and future-proof reform of European migration and asylum policy. At the same time, Member States continue to be affected by irregular migration flows, both primary movements and secondary movements. Without taking strong action, and considering the remaining flaws in the internal and external dimension that still hamper the effectiveness of a common European migration and asylum system, drivers for irregular migration will remain and might increase. The European Union must improve its ability to prevent irregular migration towards the EU and send out a strong joined signal of managed and orderly migration towards the EU's own citizens as well as towards the rest of the world.

In the context of the evolving migratory challenges characterised by the need to support strong asylum, migration and return systems of the Member States and the need to prevent and adequately handle situations of pressure and reduce irregular arrivals, the New Pact on Migration and Asylum presented by the Commission on 23 September 2020 is a good basis for making a new start in the debate on the European migration and asylum policy. It aims to address the shortcomings of the current European asylum system. Our aim must be to establish a fair and functioning comprehensive system that meets practical challenges, reduces irregular migration and provides effective, faster, humane, more efficient and crisis-

proof procedures, while respecting the fundamental rights of migrants and applicants for international protection as well as the special protection needs of vulnerable persons, such as unaccompanied minors.

The core elements of solidarity and fair sharing of responsibility amongst all Member States, as well as the balance between those elements and the corresponding obligations for the Member States – also in implementing the asylum and migration *acquis* – must be discussed together with a view to a compromise that takes into account the concerns of all Member States. The investment in stronger political relationships with our partners in third countries is key for a successful European migration and asylum policy.

## **Fundamentals**

1. The **functioning of the comprehensive EU migration and asylum system** requires strong and effective systems in each Member State, mutual and mandatory solidarity support for the most affected Member States – especially for Member States of first arrival – and a significant strengthening of comprehensive, tailor-made and mutually beneficial migration partnerships with countries of origin and transit, including to support the development of robust and sustainable migration and asylum as well as return and, where applicable, reintegration systems. Furthermore, an efficient migration management needs an effective control of external borders and a distinction, at an early stage, between persons fulfilling or not fulfilling the conditions to lawfully enter the EU and between applicants for international protection in need or evidently not in need of protection. In this process, the Union's willingness to grant protection to those eligible for international protection is explicitly confirmed. At the same time it is crucial to strengthen and expand protection capacities in countries of origin and transit. Persons not fulfilling the conditions to lawfully enter the EU and not eligible for protection should in principle not be authorised to enter the EU, or leave the EU again as soon as possible. For a sustainable migration and asylum system an improved

European return policy in order to enhance return and readmission and fight against migrant smuggling is key, while also legal migration and legal pathways for persons in need of protection just as sustainable reintegration of returnees continue to be integral parts of a balanced migration concept. A solid governance system is a crucial condition for the proper functioning of such a sustainable migration and asylum system.

### **Key elements of a comprehensive approach**

2. It is strongly welcomed that the New Pact is designed to significantly strengthen the **external dimension** of European migration policy, building on the progress made so far. Migration and forced displacement can only be addressed effectively through strengthened partnerships with third countries, and through a whole-of-the-route approach, integrating all the necessary policy instruments available. The EU has to reinforce its efforts regarding the prevention of irregular migration and to address irregular arrivals to the EU as early as possible. Well developed and functioning partnerships with relevant third countries are key and a prerequisite for a well functioning European migration and asylum system. This requires adequate funding, i.a. through the Trust Fund for Africa, as well as the efficient implementation of a coherent and comprehensive approach where the European Commission takes on a strong coordinating role in cooperation with Member States and where sufficient financial resources are made available. Respective funds need to be managed with sufficient flexibility so as to being able to respond to and focus on the specific needs of each relevant partner. The comprehensive approach includes all major areas such as mitigating the root causes of irregular migration and forced displacement, the fight against migrant smuggling, supporting third countries' capacities in terms of migration and asylum governance and management, including as regards border management and search and rescue, as well as the protection of persons in need of international protection, support to host communities, legal migration and legal pathways,

return, readmission and reintegration, including capacity building in these areas. This should be done through the strengthening of comprehensive, balanced and tailor-made partnerships with relevant countries of origin or transit and host countries, in the mutual interest.<sup>1</sup> European Commission, in close consultation with the European External Action Service (EEAS) and the EU Member States, is requested to promote and advance tailored partnerships with prioritised third countries and to keep the Council closely and regularly informed of the tangible next steps including concrete objectives for relevant third countries. North Africa and sub-Saharan Africa, the Western Balkans, Turkey and Middle East as well as the countries connecting Europe and Asia should be prioritised, as well as South America and Eastern partners, taking also into account the developments along the Mediterranean and Atlantic routes and, inter alia, the number of asylum seekers coming to Europe, the average EU-wide rejection rate, and the number of refugees hosted by the country. For identified third countries, a roadmap for future action needs to be established. Action on promoting and advancing tailor-made partnerships with key third countries needs to be taken without further delay and with the aim to show tangible results.

3. It is important, already today, to swiftly promote **joint support and coordination activities** with major partner regions. Successful examples of cooperation on the fight against migrant smuggling should be replicated and expanded as part of the new action plan against migrant smuggling. As in the case of the recent initiative taken by Italy by chairing the Counter-smuggling conference with regard to African countries and by the initiative taken by

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<sup>1</sup> The conclusions of the European Council of 28 June 2018 (EUCO 9/18) continue to be valid here.

Austria with countries along the Eastern Mediterranean Route, the role of Member States is essential in engaging with external partners, building upon existing relations and making sure the messages conveyed by EU actors and by those Member States that are most involved are coherent.

4. Reaching out to third countries with appropriate means and resources means bringing coordination among and interaction between Member States, EU structures and partners to a whole new level. To engage properly with third countries in our complex institutional set-up, we need to identify much more clearly who is in charge of what on the basis of which information and with what policies and tools at their disposal. An operational structure should be further developed, respecting the institutional prerogatives between the relevant actors, namely the Council, Member States, the Commission, the EEAS (including EU Delegations) and EU agencies, to identify and assign actions to be conducted with appropriate consideration for the situation of countries of origin and with proper alignment of several relevant EU policy areas, including existing legal migration possibilities, development and trade, and adequate use of resources, including the Neighbourhood, Development and International Cooperation Instrument. The Council's negotiation mandate for this instrument earmarks a meaningful funding of at least 10% for actions related to migration.

With political steer from Coreper and from the Council, initiatives to be taken towards third countries on migration issues would thus be defined in a common approach to be conveyed with adequate commitment and firmness by all EU institutions and Member States as well as relevant EU agencies. Operational objectives should be ascribed to all actors involved, including EEAS (via the EU Delegations) with regard to return.

5. **A strong and effective management of the EU's external borders** must provide for an effective control of migration into the EU. A priority of the

Member States in this regard is the full and rapid implementation of the European Border and Coast Guard Regulation. In this context, a swift establishment of the Standing Corps, a strong supporting role for Frontex in the EU's common return system and appropriate funding are of particular importance.

6. **Managed and orderly migration at the external borders of the EU** sends a clear signal to the rest of the world that Europe has a strong common migration and asylum policy, under which only persons presenting grounds for legal stay or presumably entitled to international protection while not posing a serious security threat may enter the EU. This is a key issue as such procedures help prevent irregular primary and secondary movements. It is also an acute issue of security for the whole EU and also contributes to the integrity and to enhanced trust in the well-functioning of the Schengen area. In this context, the swift establishment by 2023 of the new IT-architecture, including the new systems EES, ETIAS, ECRIS-TCN and Interoperability is of utmost importance. It can build the necessary confidence of the citizens and Member States in the area of free movement and improve the functioning and security of the EU.
7. Further discussion is needed in particular on the parameters and modalities necessary to ensure the pre-entry phase consisting of a screening, asylum border procedure and return border procedure. A functioning screening (registration, identification, security and health checks) is in the interest of a comprehensive European migration and asylum system, so as to prevent irregular migratory flows and ensure the registration of every person entering the EU. Whilst it is the understanding of all Member States that applicants who are evidently not entitled to protection must not be allowed to enter the EU, Member States are of different opinion regarding a mandatory border procedure and have different views regarding the practicability of the system in particular the administrative efforts involved, temporary measures

restricting the freedom of movement and the impact on the return rate. Further discussions are needed in this regard. For the border procedure to function well in practice, the system needs to be able to rely on effective returns, tailored and reliable support by relevant EU agencies and Member States, taking into account the specificities and needs of the front line Member States and the different types of borders. This includes among others ensuring adequate accommodation and care and preventing the overburdening in particular of border facilities and connected infrastructure. Financing the establishment of adequate accommodation, care, border facilities and connected infrastructure should be adequately reflected in the regulations on the establishment of the Internal Security Fund, the Border Management and Visa Instrument as well as the Asylum and Migration Fund.

8. Against this background and in order to find a fair balance between responsibility and solidarity further reflections are needed on the conditions of the border procedure, in particular on how:
  - a. the administrative procedure can be meaningfully supported by measures by the Commission, agencies and Member States, including the required human and financial resources;
  - b. to significantly enhance the return of rejected applicants;
  - c. to establish objective, justifiable and easily applicable criteria on the basis of which a mandatory asylum border procedure could function in practice;
  - d. to recognise and protect the needs and rights of vulnerable persons such as unaccompanied minors, victims of trafficking in human beings, children and women affected by violence (necessary exceptions and special provisions);

- e. to prevent unauthorised entry of third country nationals subject to the pre-entry phase.

While the procedure needs to remain practical, efficient, feasible and with realistic deadlines, fundamental rights of persons concerned, including effective remedies, must be observed.

In order to make progress in creating a common understanding of a pre-entry phase further structured and constructive study and discussion at technical and political level are needed, as well as an understanding of the possible consequences of the proposed procedure, i.a through numerical examples comprising practical and financial aspects.

9. All Member States commit to mutual support including in cases of migratory pressure or in times of crisis of one of the Member States. While the EU should make all possible efforts to avoid situations of crisis, there is broad agreement for having a mechanism of mandatory solidarity in cases of crisis situations as well as in cases of migratory pressure. The mechanism to be triggered and implemented at short notice, should involve the Council and the Member States in an appropriate manner.
10. Due to their geographical situation, the Member States at the EU external borders have a significant role in the functioning of the European migration and asylum management, and they must not be left without reliable and strong support of all Member States. Owing to the particularities of disembarking after rescue at sea, a solution in regard to an appropriate solidarity mechanism addressing such cases is crucial for the European Union as a whole as it may contribute to release migratory pressure on the Member States of first arrival. The Joint Declaration of Intent on a controlled emergency procedure signed by Malta, Italy, France and Germany on 23 September 2019 is a useful operational example of solidarity through action but a more coherent approach needs to be developed, taking into



consideration swift asylum procedures, effective return procedures and the prevention of pull factors based on the proposals of the Pact on Migration and Asylum. In order to make progress in creating a common understanding in this regard, further structured and constructive study and discussion at technical and political level are needed. The Commission is invited to set up the contact group on search and rescue as soon as possible.

11. The mechanism must be able to provide for meaningful, tailor-made measures of mandatory solidarity combining flexibility with a guarantee of effectiveness and rapidity for Member States under pressure. Solidarity provisions should allow for a clear reduction of pressure on the benefitting Member States. A majority of Member States are in favour of a variety of supporting solidarity measures provided for in the form of relocation, capacity building in the field of migration including border protection, asylum, reception and return, measures aimed at responding to migratory trends affecting the benefitting Member State, including cooperation with third countries. Support in the area of return is also an important element of solidarity aiming at a clear reduction in the number of persons obliged to leave the most affected Member States. Verifiable improvements in the external dimension are of benefit to all Member States in the medium to long term, especially in reducing migratory pressure or expanding return possibilities.
12. While relocation and return sponsorship could be considered as meaningful supporting measures to reduce the pressure of the benefitting Member States, the question whether the correction mechanism should foresee relocation or return sponsorship as mandatory in specific situations is assessed differently in a number of Member States. Some Member States currently see the need for a flexible mechanism while others assess in particular mandatory relocation as a key element for a meaningful solidarity.

In this context and in order to find the right balance between responsibility and solidarity further consideration should be given in particular on:

- a. the conditions under which Member States carry out relocation and/or return sponsorships and other solidarity contributions:
- b. the conditions and situations under which the mechanism applies.

In order to find feasible and coordinated solutions to common European challenges and to make progress in creating a common understanding of the balance between solidarity and shared responsibility further structured and constructive study and discussion of the proposal at technical and political level are needed. Another focus should be given to defining rules for the solidarity commitment of all Member States.

In order to have a more solid understanding, relevant numerical examples of the proposed solidarity mechanism should be carried out. The process will be successfully finalised with the adoption of the full legislative framework of the Pact on Migration and Asylum, in particular when the legislative work on the APR, AMMR and the Crisis Instrument are completed. In order to reach this, the legislative preparation work which has commenced under the German Presidency has to be further pursued.

13. If the overall system is to function, **abuse of the asylum system and irregular secondary movements must be prevented.** To achieve this, the asylum procedure and the reception conditions in all Member States must fully comply with the legal requirements of applicable EU law and the Member State responsible for carrying out the procedure for international protection must be quickly and clearly identified after the screening and, where applicable during possible asylum border procedure. Unbureaucratic transfers, the enforcement of rules on responsibility and adequate transfer time limits are important in order to prevent abuse. Admission benefits and services shall

in principle only be provided in the Member State responsible. The goal must be that applicants in general have to remain in the Member State responsible while their application is being examined or reviewed, and incentives must be created for applicants to comply. Such strengthening of the rules related to the Member States' responsibilities including the monitoring of their implementation are keystones for preventing irregular secondary movements inside the Union.

14. A functioning asylum system requires an **improved and effective return policy at European level**. This includes returns from all Member States, and the proposed return border procedure. The development of safe third country and safe country of origin concepts, in full compliance with international human rights standards, play a considerable role in this context. Voluntary return with adequate measures for sustainable reintegration is a key element. The expanded responsibilities of Frontex are strongly welcomed. So is the establishment of a new assertive Return Coordinator of the Commission, who is expected to play a key role in improving the effectiveness of returns and sustainable reintegration feeding into efforts by the Commission, including, where necessary, to improve third country cooperation on readmission as part of the comprehensive migration partnerships with third countries. The creation of the High Level Network for Return, can be an important step in this regard, but will need to be accompanied by the establishment of a solid governance system bringing together different components in an efficient and complementary manner.
15. A swift adoption of the recast of the **Return Directive** is important in order to make the procedure efficient and effective and to harmonize national provisions in this area. The European Parliament is invited to grant as soon as possible a mandate to begin negotiations on the Directive.

16. A further key element is the improvement of third-country cooperation on returns – especially by ensuring that existing **readmission agreements and arrangements** are fully implemented. In the absence of this, improvements of our internal asylum and return systems cannot be fully effective. In the framework of developing comprehensive partnerships, a further analysis by all actors might be useful to understand and address obstacles on increasing returns on a country-by-country basis. The Commission is invited to launch initiatives for new agreements and arrangements and to work towards the resumption of initiated negotiations as part of the strategic approach with the objective of improving effective cooperation on returns making use of leverages in relevant EU policy areas, and agreements both already existing or under preparation (such as post-Cotonou).
17. The proposed mechanism to create appropriate incentives to improve cooperation with third countries on returns and readmission is welcomed. An important first step towards this coherent approach will be the Commission’s assessment on return cooperation with third countries **pursuant to Article 25a of the Visa Code**. The Commission is invited to present this report as soon as possible and to exploit its full potential, especially with a view to utilize the full capabilities of the EU’s economic and diplomatic leverage and to improve the level of cooperation on return and readmission in relevant EU policy areas with third countries.
18. Close cooperation with third countries is also essential in the **key area of voluntary return** and reintegration. An important part of this is identifying new approaches in partnership with third countries and better connecting them with other initiatives in the area of development cooperation and national strategies. There is also a need to develop a new approach to design and implement tailor-made programmes in support of returns and sustainable reintegration. The Commission is asked to make rapid progress with the

strategy on voluntary return and reintegration and to welcome input from Member States in this regard.

19. The relevant **EU agencies** have an essential role in providing operational support to Member States and should make use of their full potential already on the basis of the existing legal framework. In addition to the new mandate for the European Border and Coast Guard, it is of central importance to quickly upgrade the European Asylum Support Office (EASO) to the status of a full EU agency (EUAA Regulation).
20. It is also essential to have a **European digital infrastructure** that supports European migration and asylum management. There is full support for the Commission's aim to further intensify information sharing at European level, to be achieved largely with the implementation of the interoperability regulations, which remains an urgent and shared goal. This includes creating the legal foundation for an improved EURODAC database.
21. **Legal migration** is important as an integral part of a well-balanced, managed and orderly migration strategy, while respecting the competencies of the Member States. Improved legal migration tools are also essential in mutually beneficial migration partnerships with third countries. Safe and regular migration channels are key and will benefit both countries of origin as well as countries of destination. The EU must do better in the international competition for highly qualified or skilled third-country nationals. To achieve this, a more attractive Blue Card is needed, designed with the flexibility necessary for national labour markets. The Commission is invited to elaborate further the concept of Talent Partnerships and of an "EU Talent Pool". The Member States will also join in the discussion on developing legal migration schemes into the EU. Better implementation and stronger coherence within the existing legal framework is supported, but the need for new areas of EU legislation on legal migration should be carefully assessed, with a focus on

certain other categories of third-country nationals, such as mobile workers or service providers.

22. People in need of international protection must be supported, in line with humanitarian principles and the provisions of international refugee law. While therefore reaffirming the EU engagement to **resettlement**, the concrete commitments of Member States in that respect and the **establishment or strengthening of complementary legal pathways as well as community sponsorship programmes** should be driven forward on a voluntary basis.
23. Member States welcome that the **Action Plan on Integration and Inclusion 2021-2027** was presented by the European Commission on 24 November 2020 and look forward to a continued and intensified exchange of experts at European level in particular within the framework of the European Integration Network (EIN) and the European Migration Forum (EMF).
24. The EU's **resilience and flexibility in dealing with crisis situations should be strengthened**. The Commission's recommendation to establish an EU mechanism for Preparedness and Management of Crises related to Migration was extensively discussed and widely supported, notably to ensure its interaction with already existing mechanisms. The intention is to make this new mechanism swiftly fit for the future, in line with the work and the guidance of the Council, which acknowledges the importance of constant monitoring and managing migration. In this context, we welcome the launch of the dedicated Network gathering all relevant institutions and actors which must be at the forefront of this process, and which will necessarily have to integrate all existing instruments available to address the crisis in a complementary manner. This includes strengthening existing early warning systems at the European level and looking into the use of further digital tools to improve forecasting capabilities. The use of digital technology should be increased in migration management. The Commission's feasibility study on AI

based migration forecasting has to be analysed in order to prepare possible next practical steps to support the Pact on Migration and Asylum.

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