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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

TOWARDS A REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM AND ENHANCING LEGAL AVENUES TO EUROPE

Migration has been and will continue to be one of the defining issues for Europe for the coming decades. Underlying trends in economic development, climate change, globalisation in transport and communications, war and instability in neighbouring regions, all mean that people will continue to seek to come here – for refuge, for a better life or following their close family. European countries will continue to stand steadfast in meeting their legal and moral commitment to those who need protection from war and persecution. And, as their own demographics evolve, they will need to take advantage of the opportunities and benefits of attracting foreign talents and skills.

In a continuing response to the ongoing migration and refugee crisis, on 10 February the Commission reported[1] on the priority actions taken under the European Agenda on Migration[2] to address the immediate challenge of restoring order on the Eastern Mediterranean/Western Balkans route. Following the European Council meetings of 18-19 February and 17-18 March and the meeting of the Heads of State or Government of 7 March[3], the Commission will continue to provide support to Member States to implement all the agreed elements to stem disorderly irregular migration flows, protect our external borders, and safeguard the integrity of the Schengen area, including in particular the decisions on relocation, the hotspots and measures to ensure returns and readmissions, whilst ensuring effective access to asylum procedures for those in need of international protection.

Applying the current rules and improving the functioning of existing tools and mechanisms is key to regaining control of the present situation. But at the same time, as noted in the conclusions of the European Council of 18-19 February and those of 17-18 March[4], it is time for progress to be made in reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. There are significant structural weaknesses and shortcomings in the design and implementation of European asylum and migration policy, which the crisis has exposed. The EU now needs to put in place the tools to better manage migration flows in the medium and long term, in line with the approach set out in the European Agenda on Migration.

The overall objective is to move from a system which by design or poor implementation places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to a fairer system which provides orderly and safe pathways to the EU for third country nationals in need of protection or who can contribute to the EU's economic development. The EU needs a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for third country nationals and countries of origin and transit. For it to work, this system must be comprehensive, and grounded on the principles of responsibility and solidarity.

Over the past months, significant steps have been taken to tackle irregular migration resolutely and manage the EU's external borders more efficiently. It is essential that the proposed Regulation establishing a European Border and Coast Guard[5] is adopted by June at the very latest so that it can start functioning during the summer. Implementation of the

[1] COM(2016)85 final.
[2] COM(2015)240 final.
[3] EUCO 1/16; SN 28/16.
[4] EUCO 12/1/16.
[5] COM(2015)671 final.

Action Plans against migrant smuggling[6] and on return[7] is also progressing, with all relevant Agencies and Member States having scaled up their work in this area.

But reducing irregular flows to and within Europe, and protecting our external borders, can only happen effectively if we look at the migratory phenomenon in a broad and comprehensive perspective: this means that we need at the same time to enhance legal and safe pathways to Europe, to improve the use and implementation of existing legal migration instruments, to strengthen the Common European Asylum System as well as to continue tackling the root causes of migration. If we want to improve our way of managing migration, we have to become better at attracting the skills and talents that we will need in the future, and at reaping the benefits of migration by ensuring effective integration and participation into the host society of all - refugees or legal migrants.

Together with the other measures following the European Agenda on Migration, this Communication sets out steps to be taken towards a more humane, fair and efficient European asylum policy, as well as a better managed legal migration policy.

I. TOWARDS A ROBUST AND SUSTAINABLE COMMON ASYLUM POLICY

I.1 Inherent weaknesses of the Common European Asylum System in time of migratory crisis

The large-scale, uncontrolled arrival of migrants and asylum seekers in 2015 has put a strain not only on many Member States' asylum systems, but also on the Common European Asylum System as a whole. The Common European Asylum System consists of a legal framework covering all aspects of the asylum process and a support agency - the European Asylum Support Office (EASO) - to support the implementation of the legal framework and facilitate practical cooperation between Member States. The crisis has exposed weaknesses in the design and implementation of the system, and of the 'Dublin' arrangements in particular.

The Dublin Regulation[8] establishes the criteria and mechanisms for determining which Member State is responsible for examining an application for international protection. Those who seek, or have been granted, protection do not have the right to choose in which Member State they want to settle. If the Member State in which the asylum seekers apply is not the one responsible for dealing with the application, they should be transferred to the responsible Member State.

[6] COM(2015)285 final.
[7] COM(2015)668 final.
[8] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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, OJ L 180, 29.6.2013, p. 31. The United Kingdom and Ireland are bound by this Regulation, following the notification of their wish to take part in the adoption and application of that Regulation based on Protocol 21 to the Treaties. The position of these Member States with regard to any amendment to this Regulation is defined by Protocol 21. Denmark applies the Dublin Regulation on the basis of an international agreement (OJ L 66, 8.3.2006 p.38). It shall, in accordance with Article 3 of that agreement, notify the Commission of its decision whether or not to implement the content of any amendment to the Regulation.

The Dublin system was not designed to ensure a sustainable sharing of responsibility for asylum applicants across the EU, a shortcoming that has been highlighted by the current crisis. The main criterion in practice for allocating responsibility for asylum claims is irregular entry through one Member State's territory. Reliance on this criterion was based on the assumption that a linkage should be made between the allocation of responsibility in the field of asylum and the respect by Member States of their obligations in terms of protection of the external border. However, the ability to effectively control irregular inflows at the external border is to some extent dependent on cooperation with third countries. In addition, the experience of recent years has shown that, especially in situations of mass influx along specific migratory routes, the current system places responsibility, in law, for the vast majority of asylum seekers on a limited number of individual Member States, a situation which would stretch the capacities of any Member State. This also partly explains why over the past years there has been an increasing disregard of EU rules. Migrants also often refuse to make asylum applications or comply with identification obligations in the Member State of first arrival, and then move on to the Member State where they wish to settle and apply for asylum there. These secondary movements have resulted in many asylum applications being made in Member States which are not those of the first point of entry, a situation which has in turn led several Member States to reintroduce internal border controls to manage the influx.

But even before the present crisis, there have been serious shortcomings in the implementation of the Dublin Regulation such that, even with a more efficient and stricter enforcement by all Member States of the existing rules, and with additional measures to prevent secondary movements, there is a high likelihood that the current system would remain unsustainable in the face of continuing migratory pressure[9]. Problems include difficulties in obtaining and agreeing on evidence proving a Member State's responsibility for examining the asylum application, leading therefore to an increase in the number of rejections of requests to accept the transfer of applicants. Even where Member States accept transfer requests, only about a quarter of such cases result in effective transfers, and, after completion of a transfer, there are frequent cases of secondary movements back to the transferring Member State. The effectiveness of the system is further undermined by the current rules which provide for a shift of responsibility between Member States after a given time. So, if an applicant absconds for long enough in a Member State without being effectively transferred, this Member State will eventually become responsible.

A further impediment to the effective functioning of the Dublin system results from the difficulty in transferring applicants to Member States with systemic flaws in critical aspects of their asylum procedures or reception conditions. The effective suspension of Dublin transfers to Greece since 2011 has proved a particularly critical weakness in the system, in particular given the large number of migrants arriving in Greece in recent months[10].

The Common European Asylum System is also characterised by differing treatment of asylum seekers, including in terms of the length of asylum procedures or reception conditions across Member States, a situation which in turn encourages secondary movements. Such divergences result in part from the often discretionary provisions contained in the current

[9] This has been confirmed by an external evaluation on the implementation of Regulation (EU) No 604/2013 (Dublin III Regulation) and evaluation report, available under http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm.

[10] The Commission adopted on 10 February 2016 a Recommendation [C(2016) 871 final] on the urgent measures to be taken by Greece in view of the resumption of Dublin transfers.

Asylum Procedures Directive[11] and Reception Conditions Directive[12]. Moreover, while the Qualification Directive[13] sets out the standards for the recognition and protection to be offered at EU level, in practice recognition rates vary, sometimes widely, between Member States[14]. There is also a lack of adequate convergence as regards the decision to grant either refugee status (to be accorded to persons fleeing persecution) or subsidiary protection status (to be accorded to persons fleeing the risk of serious harm, including armed conflict) for applicants from a given country of origin. This divergence has likewise encouraged secondary movements, as have variations in the duration of residence permits, as well as in access to social assistance and family reunification.

The EU has one of the most protective and generous asylum systems in the world, and the granting of international protection status in EU Member States has in practice almost invariably led to permanent settlement in the EU, while its original and primary purpose was to grant protection only for so long as the risk of persecution or serious harm persists. Once the circumstances in the country of origin or the situation of an applicant change, protection is no longer needed. However, although the Qualification Directive contains provisions on cessation of status, currently they are not systematically used in practice.

Building on the immediate priorities identified in the European Agenda on Migration, the Commission has taken financial, legal[15] and operational measures to better enforce Common European Asylum System rules as further outlined in the Communication of 10 February 2016. In particular, the Commission proposed the two temporary crisis relocation schemes agreed in September, which provide for the transfer of responsibility for certain asylum claimants from Italy and Greece to other Member States.

It is imperative that these measures are implemented fully and swiftly to cope with immediate challenges. The Union must achieve through concerted action between all Member States and with the full support of the Commission and Union bodies the proper application of the existing legal framework so as to consolidate stability and order in the functioning of the Common European Asylum System. At the same time, the EU must learn from the present crisis and start addressing its inherent weaknesses for the longer term. Actions are therefore needed to ensure a humane, fair and efficient system for the future.

I.2 Addressing the structural shortcomings: five priorities

In this context, the Commission considers that there are five priority areas where the Common European Asylum System should be structurally improved.

[11]Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection , OJ L 180, 29.6.2013, p. 249.
[12] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection , OJ L 180, 29.6.2013, p. 96.
[13] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9.
[14] For instance, for the period between January and September 2015 the recognition rates for asylum seekers from Afghanistan varied from almost 100% in Italy to 5.88% in Bulgaria.
[15] The Commission adopted reasoned opinions against Member States in nine infringement cases concerning their non-transposition of directives which are part of the Common European Asylum System, on 10 February 2016.

Priorities

a) Establishing a sustainable and fair system for determining the Member State responsible for asylum seekers

Objective: Adapting the Common European Asylum System to deal better with the arrival of a high number of asylum seekers/refugees through specific points of entry and ensuring a high degree of solidarity and a fair sharing of responsibility between Member States through a fair allocation of asylum seekers.

Actions: The Commission will propose to amend the Dublin Regulation by either streamlining and supplementing it with a corrective fairness mechanism or moving to a new system based on a distribution key.

b) Reinforcing the Eurodac system

Objective: Supporting the application of the Dublin Regulation and facilitating the fight against irregular migration.

Actions: The Commission will propose to adapt the Eurodac system to reflect changes in the Dublin mechanism and expanding its purpose beyond asylum.

c) Achieving greater convergence in the EU asylum system

Objective: Strengthening and harmonising further the Common European Asylum System rules, so as to ensure more equal treatment across the EU and reduce undue pull factors to come to the EU.

Actions: The Commission will propose a new Regulation establishing a single common asylum procedure in the EU and replacing the Asylum Procedures Directive, a new Qualification Regulation replacing the Qualification Directive and targeted modifications of the Reception Conditions Directive.

d) Preventing secondary movements within the EU

Objective: Ensuring that the functioning of the Dublin mechanism is not disrupted by abuses and asylum shopping by applicants for and beneficiaries of international protection.

Actions: The Commission will include strengthened procedural measures in its proposals under the new Asylum Procedures and Qualification Regulations as well as the Reception Conditions Directive, to discourage and sanction irregular moves to other Member States.

e) A new mandate for the EU's asylum Agency

Objective: Facilitating the functioning of the Common European Asylum System and of the revised Dublin distribution mechanism, developing targeted actions in key areas, and ensuring a more harmonised assessment of the protection needs across Member States.
Actions: The Commission will propose to amend EASO's mandate so it can play a new policy-implementing role as well as a strengthened operational role and providing sufficient financial resources and legal means for that purpose.

(a) *A sustainable and fair system for determining the Member State responsible for examining asylum claims*

The Dublin Regulation establishes the criteria and mechanisms for determining which Member State is responsible for examining an application for international protection. They aim to ensure quick access of asylum applicants to an asylum procedure and the examination of an application in substance by a single, clearly determined, Member State. These objectives remain valid. The alternative – to allow asylum seekers to have their applications dealt with by the Member States of their choice – would act as a pull factor even if there was a completely level playing field between Member States in terms of reception conditions of asylum seekers and treatment of their claims. It would also not provide for solidarity or a fair sharing of responsibility. The need for such criteria and mechanisms is envisaged by the Treaty.

The Commission intends to put forward, as a matter of priority, a proposal to reform the Dublin system. Two main options for reforming the determination of responsibility under the Dublin system should be considered at this stage. Under both options, Member States of first point of entry should identify, register, and fingerprint all migrants, and return those not in need of protection. Moreover, as a further expression of solidarity, EU funding in relation to both options may need to be considered. As both options would be designed to address situations of mass influx, consideration could also be given to repealing the Temporary Protection Directive[16].

- *Option 1: Supplementing the present system with a corrective fairness mechanism*

Under this option, the current criteria for the allocation of responsibility would be essentially preserved, but the system would be supplemented with a corrective fairness mechanism, based on a distribution key, allowing for adjustments in allocation in certain circumstances. This option would maintain a linkage between the allocation of responsibility in the field of asylum and the respect by Member States of their obligations in terms of protection of the external border, but would enable situations of mass influx through individual Member States to be more effectively confronted and ensure greater fairness between Member States. The corrective mechanism could be combined with amendments to the Dublin Regulation to make procedures more efficient, in particular by deleting the clauses on cessation of responsibility.

The supplementary corrective mechanism could emerge from the crisis relocation scheme proposed by the Commission in September last year[17], to be triggered in situations risking to jeopardize the application of the Dublin Regulation due to heavy pressures characterised by a large and disproportionate inflow of third country nationals which place significant demands on the asylum system of a Member State. It could be considered whether triggering the supplementary mechanism should also be linked to the prior activation of operational external border support from the future European Border and Coast Guard[18].

[16] Council Directive 2001/55/EC of 20 July 2001, OJ L 212, 7.8.2001. This EU asylum instrument, intended to be activated in response to the mass influx of persons in need of international protection, has never been triggered, due primarily to its lack of an in-built compulsory solidarity mechanism to ensure a fair sharing of responsibility across Member States.
[17] COM (2015) 450 final.
[18] COM(2015)671 final.

In view of effectively supporting a Member State confronted with a significant influx of migrants, adjustments to the supplementary mechanism proposed by the Commission last year could be considered. In particular, in order to mitigate any significant unfairness in the allocation between Member States, relocation could take place as soon as a predefined threshold in the number of asylum applicants is reached in a given Member State. The threshold could, for example, be determined in such a way that relocation would only occur when the number of asylum seekers allocated to a given Member State significantly exceeds what would result from a distribution of asylum seekers across the EU based on certain objective criteria. Another adjustment could enable the relocation of any applicant with a reasonable likelihood of being granted international protection[19], and not just of nationalities with a recognition rate of at least 75%.

- *Option 2: A new system for allocating asylum applications in the EU based on a distribution key*

Under a new system for allocating asylum applications in the EU, determination of responsibility would for the most part no longer be linked with the Member State of first application or irregular entry. Instead, responsibility would be primarily allocated on the basis of a distribution key reflecting the relative size, wealth and absorption capacities of the Member States[20]. As such, this would entail a fundamental change to the current system. However, certain criteria – notably family or dependency links, the best interest of the child, and possession of a visa or residence permit – would, as at present, override the application of the distribution key and could result in a corresponding deduction from the Member State's allocation under the key. Moreover, once the responsibility of a given Member State is definitively established, this Member State would remain the only one responsible to examine a given applicant's claim, thereby deterring secondary movements and allowing procedures to be shortened and made more efficient.

In contrast to option 1, most applicants would be directly allocated, on the basis of the distribution key, to another Member State when they make an application anywhere in the EU. Member States of first application would, however, be responsible for examining the asylum claims of applicants for instance those coming from countries of origin which the EU has designated as safe so as to facilitate their speedy return and maintain a link with Member States' obligations in terms of protection of the external border. Different variants of this option are possible, placing a greater or lesser responsibility on the Member State where the application is made to verify whether the overriding criteria apply, such as whether the applicant has family links to another Member State. One alternative could be for this verification to be carried out by the Member State where the application is made; another could be for that verification to only take place in the Member State to which allocation has been made on the basis of the distribution key.

- *Long-term perspective*

As signalled already in the European Agenda on Migration, in the long term, consideration could be given to the possibility of transferring responsibility for the processing of asylum

[19] For example, to all applicants not coming from a country-of-origin designated as safe by the EU.

[20] Although the distribution key could follow the approach under the current and proposed relocation schemes, further reflection could be given to the design of the key, in particular as concerns the account to be taken of criteria such as the refugee population in Member States and unemployment levels as well as the other efforts made including through resettlement.

claims from the national to the EU level, for instance by transforming EASO into an EU-level first-instance decision-making Agency, with national branches in each Member State, and establishing an EU-level appeal structure. Under such an approach, Member States would remain responsible for the reception of asylum seekers, and of the refugees once recognised, which would be allocated to them on the basis of a distribution key as suggested above.

This would establish a single and centralised decision-making process, in first instance and in appeal, and would thereby ensure a complete harmonisation of the procedures as well as a consistent evaluation of the protection needs at EU level. The distribution of asylum seekers among Member States based on a distribution key would in parallel ensure a fair sharing of responsibility for their care. In addition to requiring a major institutional transformation, substantial resources would need to be allocated to these new EU-asylum bodies for the processing of the very significant numbers of applications currently dealt with by Member States' authorities[21]. Such a far reaching solution would therefore be difficult to envisage in the short or medium term.

(b) Reinforcing the Eurodac system

The Eurodac system and the fingerprints stored in that database are used by Member States as evidence that an applicant for international protection or irregular migrant was present in one Member State before arriving in another one, to support the application of the Dublin Regulation. The Commission will propose to adapt the Eurodac system so as to reflect changes in the Dublin mechanism, to ensure it provides the fingerprint evidence it needs to function.

In addition, expanding the purpose of Eurodac beyond asylum is relevant considering Member States' difficulties to effectively monitor the irregular entries at the external borders and subsequent movements. Eurodac can be used to substantially enhance Member States' ability to track irregular migrants in the EU by storing fingerprint data under all categories and allowing comparisons to be made with all stored data.

The Commission will propose to extend the scope of Eurodac as a means to contribute to the fight against irregular migration by allowing the system to be used to facilitate the return of irregular migrants. In doing so, Eurodac will be used as a means to accelerate the identification and re-documentation of migrants and will enable a better assessment of the prospect of absconding, thus enhancing the effectiveness and speed of return and readmission procedures.

As set out in its Communication on Stronger and Smarter Information Systems for Borders and Security[22], the Commission will also, in the context of the overall evaluation of the existing system, identify gaps that need to be addressed in the long term by developing certain technical functionalities of the system including the possible use of other biometric identifiers, in line with data protection standards.

[21] In 2015, 1.3 million applications were lodged in the EU.
[22] COM(2016)205 final.

(c) ***Greater convergence and a genuine common EU asylum system***

More generally, the Commission intends to propose a comprehensive harmonisation of procedures across the EU by transforming the current Asylum Procedures Directive into a **new Regulation establishing a single common asylum procedure in the EU** - replacing the current disparate arrangements in the Member States - which would reduce incentives to move to and within the EU. Following consultation with Member States and stakeholders, the Commission intends to propose the setting of new rules – in place of the current discretionary ones - on key aspects of the asylum procedure, including the rules on admissibility, the use of border and accelerated procedures, the treatment of subsequent applications, and the right to remain in the territory. An essential feature of such a common procedure will be the harmonisation of the maximum duration of the procedure, both at first instance and at the appeal stage.

A critical aspect of a common approach concerns the use of the "safe country" mechanisms. In September 2015, the Commission proposed the adoption of a Regulation establishing an EU common list of "safe countries of origin"[23] in order to facilitate the swift processing of applications of persons from these countries. It is important that the Regulation be adopted without delay by the European Parliament and the Council. The objective is to move towards a fully harmonised list of safe countries of origin at EU level, based on proposals by the Commission, with priority given to the inclusion of third countries from which a significant number of applicants originate. In addition, the Commission intends to propose to harmonise the procedural consequences of using the safe country of origin mechanism and remove the current discretion regarding whether or not to use it.

As regards the "safe third country" mechanism, which enables certain applications to be declared inadmissible where protection could be availed of in a third country, the Commission, in its Communication of 10 February 2016, encouraged all Member States to foresee and require its use in their national legislation. The Commission also intends to propose a more harmonised EU approach to its use, in full respect for the international obligations enshrined in the EU Charter of fundamental rights and the European Convention on Human Rights (ECHR) and the Geneva Convention, so as to guarantee that it is applied in the same manner in all Member States, and to establish a mechanism for the adoption of an EU list of safe third countries.

Furthermore, it must be ensured that applicants are granted the type of protection they are entitled to (refugee status or subsidiary protection) but only for so long as they need it, and that they are granted a more harmonised set of rights, while maintaining consistency with the Geneva Convention and the ECHR. The Commission therefore intends, after having consulted Member States, to propose **replacing the current Qualification Directive by a Regulation, setting uniform rules on the procedures and rights to be offered to beneficiaries of international protection**. Some of the rights to be provided could correspond to the regime applicable in each Member State in relation to other third country nationals or to nationals of that Member State. However, while fully respecting fundamental rights and international norms, the Commission will carefully examine the need to adapt the level of rights in order to reduce both undue pull factors and secondary movements. The Commission also intends to better clarify the difference between the refugee and subsidiary protection status and differentiate further the respective rights attached to them.

[23] COM(2015)240 final.

In addition, measures will be provided in that Regulation to ensure that a systematic and regular check is carried out, at least in the early years following the granting of a protection status, and that, before the person is granted long term residence status, renewal of the residence permit is linked with confirmation that there is still a need for protection, based on a consideration of the current situation in the person's country of origin and of their current personal circumstances. Today, few Member States have such a regular status review system in place. Given the inherently more temporary nature of the status, more regular cessation reviews would be considered for subsidiary protection beneficiaries.

More harmonised rules on identity documents for beneficiaries of international protection will also be proposed. In addition, further initiatives could be taken in the longer term to develop the mutual recognition of the protection granted in the different Member States which could be the basis for a framework for transfers of protection.

Changes to the Reception Conditions Directive[24] will also be proposed, following consultations with Member States, to increase as much as possible harmonisation across the Member States. Further harmonising the treatment of asylum seekers across the EU is critical, not only to ensure that this treatment is humane, but also to reduce incentives to move to Europe and to other Member States within Europe. As a first step, the Commission has asked EASO to develop common technical standards and guidance for the reception systems of the Member States, in cooperation with a newly-created Network of EU Asylum Reception Authorities and the Fundamental Rights Agency. These new standards will also serve as a benchmark to facilitate monitoring.

(d) ***Preventing secondary movements within the EU***

The Commission intends to propose a range of measures across the whole asylum acquis to ensure that the functioning of the system is not disrupted by secondary movements of asylum applicants and beneficiaries of international protection to the Member State of their choice.

Proportionate sanctions should be attached to failure by an applicant to remain in the Member State responsible. Other Member States would have an obligation to send asylum seekers who have absconded back to the responsible Member State, where they would be subject to an accelerated examination procedure where their right to remain pending the appeal would not be automatic, without prejudice to the principle of *non-refoulement* and to the right to an effective remedy. In addition, an applicant who has absconded or is likely to abscond should be assigned to a designated area in the Member State, or detained if necessary, and, where possible, material reception conditions could be provided only in kind. Furthermore, existing provisions in the acquis linking the fact that an applicant has not lodged an application as soon as possible, despite having had an effective opportunity to do so, to the assessment of the credibility of the claim, could be built upon and reinforced. This could have as a consequence that the fact that a person had irregularly left the responsible Member State could be taken into account in the appraisal of the asylum claim.

Moreover, in order to prevent secondary movements of beneficiaries of international protection, the rules set out in the Qualification Directive on provision of information,

[24] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection , OJ L 180, 29.6.2013, p. 96.

cooperation and reporting obligations will be reinforced (as for the asylum seekers). It will be clearly established that refugees are only entitled to rights and benefits in the Member State that has granted them protection and in which they have an obligation to remain. In addition, the Dublin Regulation will be amended to oblige Member States to take back those beneficiaries of international protection who should remain in the Member State that granted them protection. The fact that a person has irregularly left the territory of that Member State could constitute a ground for initiating a status review.

While fully respecting the requirements of the Charter of Fundamental Rights, the provision of any right attached to the asylum procedure, including material reception conditions, will be made conditional upon registration, fingerprinting, presence and stay in the Member State responsible. Provisions on informing applicants of their obligation to apply for asylum as soon as possible when arriving in the EU as well as to remain in the responsible Member State will be reinforced. Rules on the obligation for applicants to cooperate with and report to the authorities will also be strengthened and specific measures taken for dealing with applicants for which there is a high risk of absconding, including use of accelerated examination procedures. In addition, common EU rules on the documents to be issued to asylum seekers will be proposed that would certify their identity and clearly state that they do not in principle have the right to move to another Member State. While Member States could retain the possibility to provide applicants with a travel document when serious humanitarian reasons arise that require presence in another Member State, legislative provisions need to be clarified to ensure that travel documents are never issued outside these exceptional circumstances.

The **Long Term Residence Directive**[25] will also be amended to provide that the 5-year period after which beneficiaries of international protection would be eligible for the Long Term Resident status should be restarted each time the person leaves without authorisation the territory of the Member States that has granted protection.

Generally, Member States should be obliged to provide for effective, dissuasive and proportionate sanctions for irregular secondary movements.

(e) A new mandate for the EU's Asylum Agency

The Commission will propose a stronger mandate for EASO so that it can play a new **policy-implementing role and a strengthened operational role**, and thereby **facilitate the proper functioning of the Common European Asylum System.**

The Agency, in close cooperation with the Commission and without prejudice to the latter's responsibility as guardian of the Treaties, would be responsible for a **dedicated evaluation mechanism** for monitoring the compliance of Member States with the asylum standards that are particularly necessary to adhere to in order to ensure the proper functioning of the Dublin system, notably regarding reception conditions, access to asylum procedures and respect of essential safeguards. This would imply monitoring the situation in all Member States and identifying measures that should be taken by the Member States in order to remedy existing shortcomings. Where individual action by the Member States would be insufficient to address the situation, the Agency could intervene through enhanced support. Measures would also be

[25] Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ L 132, 19.5.2011, p. 1.

foreseen in case adequate steps are not taken by the Member State concerned, in order to mitigate as far as possible any incentive for Member States or asylum seekers not to respect the rules. If the Agency establishes, based on a substantiated assessment of the situation, that no action or insufficient action has been taken by the Member State concerned, the Commission could be empowered to prescribe, by implementing acts, operational measures to be taken by that Member State, taking into account recommendations from the Agency.

Another of the Agency's key tasks would be to **ensure a more harmonised assessment of international protection applications across the EU,** based on the criteria defined by the Qualification Directive. The objective would be to address the current differences in recognition rates, by issuing detailed and regular guidelines, based on a common analysis, on the approach to be taken to asylum applicants from specific countries-of-origin, without prejudice to an individual examination of each application. Such guidelines would be endorsed by the Management Board and would be used by Member States. A reporting mechanism would facilitate assessment of whether the Agency's guidelines are taken into account in practice by the Member States. EASO, with the support of the Commission and the Dutch presidency, is currently piloting this approach by coordinating the development by Member State experts of common guidelines on the assessment of Afghan asylum claims. In addition, a case-auditing system would be put in place to monitor the quality of the asylum decisions in the Member States, including adherence to these guidelines.

Furthermore, the Agency would be given responsibility for the evidentiary assessment of whether third countries fulfil the criteria for designation as safe third country or safe third country of origin, and could provide opinions to the Commission with a view to ensuring a harmonised approach.

The Agency is also the natural choice for **operating the distribution mechanism** under a reformed Dublin system, whichever option is chosen**.** This would imply the application of any distribution key for the allocation of asylum applicants to the respective Member States, via a mechanism not entailing discretion for the Agency.

Following the model of the proposed European Border and Coast Guard, the Agency should be able to intervene, including on its own initiative, in support of Member States who have not taken necessary remedial actions or who face **emergency situations**. The Agency's interventions would consist, in particular, in assistance with case-handling and reception related support. Such interventions should be closely linked to the interventions of the proposed European Border and Coast Guard and could in many cases have the same trigger. The Agency would need to have at its disposal a rapid reserve pool of experts which the Member States would be obliged to contribute to. These experts could be deployed within very short time limits when there is a need to implement emergency measures.

Sufficient **financial resources and legal means would have to be provided to the Agency,** to ensure that it can performs effectively in its enhanced role, including as regards crisis prevention and management. Actions taken by EASO will have to be fully coordinated with other measures of support that could be provided to Member States under particular pressure, including under the new mechanism proposed by the Commission on the provision of humanitarian assistance support within the EU[26].

[26] Proposal for a Council Regulation on the provision of emergency support within the Union, COM(2016)115 final.

II. ENSURING AND ENHANCING SAFE AND LEGAL MIGRATION ROUTES

Smart management of migration requires not only a firm policy in addressing irregular flows while ensuring protection to those in need, but also a proactive policy of sustainable, transparent and accessible legal pathways. In line with the global 2030 Agenda for Sustainable Development, we recognise thereby the positive contribution of migrants to inclusive growth and the multidimensional reality of migration requiring a coherent and comprehensive response.

On the one hand, more legal channels are needed to enable people in need of international protection to arrive in the EU in an orderly, managed, safe and dignified manner and to contribute to saving lives whilst reducing irregular migration and destroying the business model of people smugglers. At the same time, the responsibility for protection should not only be increased by the EU as a whole, but equally by the international community, as this is currently shared in an uneven manner at the global level.

On the other hand, the EU needs a more proactive labour migration policy to attract the skills and talents it needs to address demographic challenges and skills shortages, thereby contributing to economic growth and the sustainability of our welfare system. More generally, the EU should take this opportunity to assess and improve the overall framework on legal and labour migration.

In addition, and as highlighted in the Communication on the 2016 European Semester[27] effective integration of legally residing third country nationals staying in the EU is essential, both in the light of the recent challenges created by the refugee crisis as well as the existing and future challenges related to migration. Building on the work already done at EU level, the Commission intends to step up its action on integration of third country nationals, by proposing an EU Action Plan on Integration. The Action Plan will outline actions related to the policy areas most relevant to integration (e.g. education, labour market integration (including entrepreneurship), social inclusion, non-discrimination) with the aim of supporting Member States, with an indication of the EU budgetary resources available.

Finally, the EU will have to strengthen its cooperation with key third countries of origin to ensure better and more comprehensive management of migration and mobility.

II.1. Moving towards a more managed approach to refugee protection in the EU – a structured resettlement system

In developing a structured resettlement system, the Commission is not starting from scratch. It has already recommended an EU-wide approach under which Member States have agreed to resettle 22,504 refugees in 2015-16 from refugee camps in the Middle East, Northern Africa and the Horn of Africa, through the intermediary of the UNHCR. As announced in the Statement agreed between the Member States and Turkey of 18 March[28], a mechanism is established to substitute irregular and dangerous migrant crossings from Turkey to the Greek

[27] COM(2016)95 final..
[28] SN 38/16.

islands with the legal channel of resettlement from Turkey to the EU. For every Syrian being returned to Turkey, another Syrian will be resettled from Turkey to the EU. On the EU side, resettlement under this mechanism will take place in the first instance by honouring the commitments under the above-mentioned EU-wide approach, of which 18,000 of the original 22,504 places for resettlement remain. The Commission has proposed that 54 000 places which were foreseen for relocations will also now be available for the purpose of resettling Syrians from Turkey to the EU[29] in case there is any further need for resettlement. In parallel, work is underway amongst Member States to put in place the humanitarian admission scheme for Syrian refugees currently in Turkey. Once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced, this scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme.

Building on these existing initiatives, the Commission will set out a **proposal framing the EU's policy on resettlement**, providing a common approach to safe and legal arrival in the EU for persons in need of protection. This proposal will put in place a horizontal mechanism for launching targeted EU resettlement initiatives, by setting out common EU rules for admission and distribution, on the status to be accorded to resettled persons, on financial support, as well as on measures to discourage secondary movements. Such EU-level initiatives could be general in scope, aimed at enhancing resettlement globally, or to facilitate resettlement from a particular third country or region, possibly linked with certain conditions on effective cooperation in migration management (e.g. the reduction of the number of persons spontaneously arriving in EU Member States, agreeing on or improving the implementation of readmission agreements). Such a mechanism could be activated by Implementing Acts, to be adopted on the basis of objectively-defined criteria (e.g. UNHCR global resettlement targets).

The EU's policy on resettlement should have the over-arching objective of ensuring that the Union takes on its fair share of the global responsibility to provide a safe haven for the world's refugees. This is a shared responsibility of the international community as a whole, and will only be adequately and sustainably addressed by a concerted and determined approach by all international actors. In that context, the EU needs to increase its support and participation for international initiatives aimed at addressing global migration and refugee challenges, such as UNHCR's global resettlement programmes,[30] but also press for increased pledging in other international contexts such as the G20. For that, the EU needs a structured common system to pool European resettlement efforts more systematically. This will enable the EU to lead by example as well as providing a visible and concrete expression of European solidarity towards the international community.

Member States should also consider other ways to increase legal entry options for people in need of international protection. Refugee-specific schemes, such as resettlement and humanitarian admissions, should be complemented by making existing regular admission schemes for general categories such as students, researchers or workers, more accessible to refugees, and initiatives already in place should be fully supported. Other initiatives, such as **private sponsorship**, where the costs of sponsorship and settlement support for persons in need of protection can be supported by private groups or organisations, can also play an

[29] COM(2016)171 final.

[30] In particular, the UNHCR High-level meeting on Global Responsibility Sharing through Pathways for Admission of Syrian Refugees in Geneva on 30 March 2016, the first ever World Humanitarian Summit in Istanbul on 23-24 May 2016 and the UNGA Summit on large movements of refugees and migrants in New York on 19 September 2016.

important role in multiplying the legal entry possibilities. Private sponsorship can take various forms, from scholarships for students and academics to integration support for sponsored family members. Private sponsorship is not only a way to increase the possibilities of legal entry but also helps to raise public awareness and support for refugees, and allows for a more welcoming environment as local communities are usually involved. This should therefore be encouraged by developing best practices at EU level, taking inspiration from the models and experience from other third-countries. Member States are also encouraged to make full use of other available legal avenues for persons in need of protection, such as humanitarian permits and the Commission will assess ways to promote a coordinated European approach in this respect too.

II.2. A smarter and well-managed legal migration policy

Over the course of the last 13 years, the EU has developed a broad range of instruments on admission of different categories of legal migrants. The "Blue Card" and the Intra-corporate Transferee Directive[31] create a legal framework for highly skilled migrants; the revised Students and Researchers Directive[32] facilitates admission and intra-EU mobility for foreign students and researchers, and provides their right to stay on for 9 months to seek a job or set up a business; the Seasonal Workers Directive[33] - which will need to be fully transposed by Member States later this year – regulates the entry and temporary stay of seasonal workers, thereby facilitating circular migration and protecting this particularly vulnerable category of workers. In addition, the Single Permit Directive[34] offers a single permit combining both residence and work permit for third country nationals, the Long Term Residence Directive[35] regulates the conditions and rights of residence for third country nationals who have been residing in the EU for over 5 years, and the Family Reunification Directive[36] sets the conditions for entry and residence for family members of third country nationals.

However, further action at EU level is needed. Firstly, the EU has to improve migration rules for highly-skilled migrants through a reform of the EU Blue Card. Secondly, the EU should explore ways of attracting innovative entrepreneurs who can boost economic growth and help creating jobs. Thirdly, legal migration has to become fully part of the overall discussion with third countries of origin and transit on how to cooperate in the management of migration flows. Finally, a reflection should start on possible ways to change, in the longer term, the whole EU model of managing legal, and particularly labour migration, including possibly by taking inspiration from successful models developed by other developed countries.

a) Attracting highly skilled workers to Europe: a more effective Blue Card

Europe is an ageing continent with a declining working-age population[37], expected to shrink by 18 million in the next decade. In addition, changes in the skills required by the EU labour

[31] Directive 2009/50EC and Directive 2014/66/EU respectively.
[32] Political agreement on the recast Directive has been reached by the co-legislator in 2015. Formal adoption will take place in the first half of 2016.
[33] Directive 2014/36/EU.
[34] Directive 2011/98/EU.
[35] Directive 2003/109/EC.
[36] Directive 2003/86/EC.
[37] See European Commission, The 2015 Ageing Report, European Economy 3/2015.

markets between 2012 and 2025 show an increasing need for highly skilled human capital (from 68 to 83 million, or +23%)[38]. At the same time, there is a need to better harness the potential of EU's workforce as evidenced by the high unemployment rates, especially among youth, the low participation rates and the persisting labour market mismatches in the EU. This requires concerted effort at all levels focused on investing in skills development of the existing workforce, fostering policies aimed at increasing the activity rate to use all skills available, and through promoting intra-EU mobility of workers. The forthcoming Skills Agenda for Europe will be a vital component in this effort with its focus on making better use and recognition of existing skills in the EU, improving the recognition of foreign qualifications, as well as encourage further skills development where needed.[39]

However, it seems clear that these measures alone will not be sufficient to address the shortfall in skills: the EU will also need to attract talents and skills from abroad to remain a global competitive player. This is essential not only to meet current and future skills needs and ensure a dynamic economy, but also to ensure the sustainability of our welfare systems in the longer term.

Stakeholders' view clearly confirm this: in a public consultation on the Blue Card launched across the EU last year[40], 85% of respondents including employers and trade unions considered that – in addition to policy measures such as recruiting from other Member States, increasing the retirement age and labour market participation rate – the recruitment of highly-skilled workers from outside the EU is a necessary measure to address labour shortages in particular sectors or occupations in the EU. In parallel, the first European Dialogue on Skills and Migration has called for an end to the fragmentation of admission policies for highly-skilled workers in Europe, advocating a fast and transparent admission scheme[41].

The 2009 Blue Card Directive has failed to reach its potential as the EU-wide scheme for attracting talented and highly skilled third-country nationals it was meant to be. Admission conditions are fairly restrictive, the Directive provides for little coherence and harmonisation, and intra-EU mobility for Blue Card holders is very limited. Furthermore, a variety of national schemes for highly skilled exists in parallel with the EU Blue Card, creating a fragmented framework with many different applicable rules and procedures. As a consequence, the overall number of admissions for highly skilled workers into the EU remains low[42], and compared to non-European OECD countries, the EU attracts low- rather than high-educated migrants[43].

To make sure that the Blue Card is an effective instrument that facilitates the admission of highly-skilled workers, the Commission will propose changes to the current Directive with the overall aim of strengthening it as a Europe-wide scheme by developing a harmonised EU

[38] CEDEFOP projections.
[39] Upcoming initiative/Communication/strategy and one of the ten political priorities of the European Commission.
[40] http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/consulting_0029_en.htm.

[41] On 27-28 January, the Commission launched the European Dialogue on Skills and Migration, to be held on a regular basis, to engage business and trade union partners more closely in the process of attracting and integrating skilled third country nationals into the labour market (http://www.skillsandmigration.eu/).
[42] Only 13 852 Blue Cards were issued in 2014 (even less in previous years) – 87% of which by 1 Member State - and about 25 000 national highly skilled permits.
[43] Of all non-EU migrants coming to OECD countries, 48% of low-educated migrants choose an EU destination and 68% of the high-educated ones a non-European OECD destination.

common approach including: providing for more flexible admission conditions; improving and facilitating admission procedures; and enhancing rights, including to intra-EU mobility. Besides legislative changes, the Blue Card will also be better promoted so that employers as well as migrants are fully aware of the advantages of the scheme.

b) Attracting innovative entrepreneurs to the EU

In order to remain a global competitive player, the EU needs to find better ways to attract new and support present migrant innovative entrepreneurs with human and financial capital to make positive contributions to the EU's growth and competitiveness. Attracting innovative entrepreneurs to the EU would not only be part of the general approach to soften the impact of the demographic decline. It would also capitalise on the expansion of innovative trends of the economy (in particular, the digital economy, the green economy and the social economy) and contribute more broadly to foster the EU's economic growth and competitiveness. This is also fully in line with the EU "Start Up Initiative" in the context of the Single Market Strategy[44].

Against this background, the Commission will work further on ways to attract and support innovative entrepreneurs, including start-ups, from third countries. This could involve EU-wide rules on admission (and intra-EU mobility) but also measures to support the creation of businesses in high value-added sectors by highly-skilled migrant entrepreneurs. This approach could build on existing initiatives and services at European, national, regional or local level in the Member States and create appropriate synergies.

c) Towards a more coherent and effective model of legal migration management at EU level

In order to manage legal migration policies effectively, the EU will have to make better use of all its existing instruments, targeting different categories and skills of third-country nationals. That is why the Commission will launch a REFIT evaluation[45] of the existing legal migration instruments with a view to identifying potential inconsistencies and gaps, and streamlining and simplifying the rules currently in place. As part of this exercise, the Commission will also address the issue of whether there is a need for specific EU rules on international service providers within the context of trade agreements. The overall objective of this evaluation will be to improve existing rules as far as possible also in light of the need to prevent and combat labour exploitation, which the Fundamental Rights Agency (FRA) has shown[46] to be common among migrant workers. In that respect, the Commission will also continue monitoring the effective enforcement of the relevant EU acquis to ensure the protection of the rights of the migrants who are working in the EU, in particular to prevent labour exploitation, irrespective of their legal status.

The Commission will launch a study on the possible development of a mechanism at EU level that would aim at improving transparency and facilitating the matching between

[44] COM(2015)550 final.

[45] See Commission Staff Working Document "Regulatory Fitness and Performance Programme (REFIT) - State of Play and Outlook - REFIT Scoreboard" (SWD(2015) 110 final), annexed to Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Better Regulation for Better Results - An EU agenda" (COM(2015)215 final).

[46] *Severe labour exploitation: workers moving within or into the European Union* at http://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union.

potential migrants and employers. In this regard, some developed countries which compete with the EU in attracting skilled migrants[47] have recently moved towards a system of pre-selection with a "pool of pre-screened candidates", followed by actual admission procedures. Such a system is both demand-driven (i.e. requiring the need for a job offer or a contract as a pre-requisite) and focuses on human capital elements (i.e. the skills and qualifications of the person, the experience etc.)[48]. Without questioning Member States' competence to decide the volumes of economic migrants they admit, the study would look into the possibility of a pre-screening mechanism enabling the creation of a pool of candidates accessible to Member States and employers in the EU.

d) Strengthening cooperation with key countries of origin

Ensuring legal migration pathways is the other side of the coin of reinforcing readmission and returns of those who have no right to stay – and both elements need to be fully included in the discussions with third countries, particularly countries of origin of migrants, on how to cooperate for an effective management of migratory flows. This is the approach adopted within the framework of policy dialogues and operational cooperation with third countries under the Global Approach to Migration and Mobility (GAMM), where legal migration and well-managed mobility are identified as priorities in the EU's external migration and asylum policy. Within the GAMM, the EU in recent years has signed mobility partnerships and common agendas for migration and mobility with several countries in its immediate and further neighbourhood[49].

Closer cooperation will be sought with those partners that share interests with and are ready to make mutual commitments with the EU and its Member States, in particular as regards cooperation on readmission. The EU should offer a more comprehensive range of operational mechanisms and incentives to implement the Global Approach in a more structured and systematic way, as done through the High Level Dialogues, where more legal migration channels is a regular request formulated by third countries.

In its Conclusions on Migration of 18 February 2016, the European Council stressed that regarding relations with relevant third countries, the comprehensive and tailor-made packages of incentives that are being developed for specific countries to ensure effective returns and readmission require the full support of the EU and the Member States. The Commission and the High Representative/Vice-President, in full cooperation with the Member States, are pursuing this work with the aim to propose to the European Council comprehensive and tailor-made incentives, both positive and negative, encompassing all policy areas and to be used in discussions with third countries.

In doing so, the EU, in cooperation with the African partners, will build upon the conclusions set out in the Valletta Action Plan[50] which includes – amongst the possible actions in the area of legal migration and mobility – the pooling of offers on the EU side on legal migration, including pilot projects on facilitating recognition of qualifications in certain sectors/professions, and increasing the number of scholarships in the context of the Erasmus+

[47] For example Canada, Australia and New Zealand.
[48] See for example the Canadian "Express Entry" system: http://www.cic.gc.ca/english/Immigrate/skilled/index.asp.
[49] Mobility partnerships exist with Jordan, Morocco, Tunisia, the Republic of Moldova, Cape Verde, Georgia, Armenia and Azerbaijan. Common agendas for migration and mobility exist with Nigeria and Ethiopia.
[50] Valletta Summit, 11-12 November 2015.

programme and the provision of support for pre-departure measures and public employment services.

III. CONCLUSION

The priority set by President Juncker that "*Europe needs to manage migration better, in all aspects"* – from the humanitarian imperative, the need for solidarity and the demographic and skills challenge – is valid more than ever. The Commission is therefore fully committed to achieving the important objective of shaping an integrated, sustainable and holistic EU migration policy.

To that end, it is appropriate through this Communication to launch a discussion on the important subject matters covered. There is no choice but to pursue the twin-track strategy of stabilising the present situation through the full respect and application of the existing legal framework, whilst facing up to the need in a future perspective to reform the architecture of those rules. In the midst of the present crisis, the limitations of the present system and the common challenges we face have been laid bare. Therefore, it is precisely at this moment, when concerted action and strong solidarity are most called for, that this future perspective is needed to open a path towards a humane and efficient European migration and asylum policy based on a fair sharing of responsibilities. In the light of the feedback it receives to this Communication, the Commission will then come forward with the appropriate proposals.