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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism

Delegations find attached a draft declaration on a voluntary solidarity mechanism.

ANNEXE

First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism

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We, the Ministers in charge of migration matters of the Member States of the European Union and of the Schengen Associated States;

Aware of the need to put in place, in the framework of the first stage of the gradual approach of the European Pact on Migration and Asylum and in parallel with the adoption of general approaches or negotiation mandates for the "screening" and Eurodac regulations, a temporary solidarity mechanism intended to provide a concrete response to the migratory difficulties of the Mediterranean Member States of first entry;

Aware that the migration challenges of the EU have been intensified by the Russian aggression against Ukraine, which in recent months has led to massive arrivals of displaced persons to the territory of the Union, justifying the establishment of unprecedented European solidarity;

Acknowledging that some signatory Member States may determine that they are temporarily not in a position to contribute to the present mechanism due to the disproportionate pressure they encounter in this context;

Stressing that this mechanism, although non legislative and temporary, may provide useful lessons for the permanent mechanism to be introduced by the "asylum and migration management" regulation proposed by the European Commission, and that the lessons learnt will be taken into account in the ongoing negotiations on that instrument;

Fully aware that the principle of solidarity is at the heart of the European project and, in particular, of the common policy on asylum, immigration and external border control, of which the implementation of the Dublin Regulation is part;

Commit to implementing a voluntary, simple and predictable solidarity mechanism designed to provide the Member States most affected by migratory flows in the Mediterranean and mainly under pressure, including the Western Atlantic route, with needs-based assistance from other Member States complementary to European support, by offering relocations (the preferred method of solidarity) and financial contributions, without prejudice to the respect of Union law, and in particular Regulation 604/2013;

Stress, while acknowledging that the voluntary nature of this mechanism allows Member States to have preferences on the nature and the amount of their contributions, regarding for example the group of persons concerned by relocations (nationality, vulnerability, etc.) or the Member States to which their solidarity is provided, that the following common criteria need to be followed in order to ensure the predictability of the mechanism:

- relocations should primarily benefit Member States confronted with disembarkations following search and rescue operations in the Mediterranean and Western Atlantic route and also apply to other situations to take into account Cyprus' current situation or possible evolutions in the Greek islands;

- relocations should primarily apply to persons in need of international protection, giving priority to the most vulnerable ones;

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– to ensure the predictability of the mechanism, a total annual relocation volume will be set;

– each contributing Member State should present a relocation pledge on the basis of an indicative target number of relocations based on the population and the GDP[1], while maintaining the possibility of going beyond this share;

– in case of situation of disproportionate pressure on a Member State and its reception system due to secondary flows, taking into account the state of cooperation under the Dublin system, this Member State should be able to invoke it to temporarily reconsider its relocation commitment;

Commit, when a Member State voluntarily chooses to participate in solidarity, rather than through relocation, through a financial contribution to a benefiting Member State, or also to projects in third countries that may have a direct impact on the flows at the external border, to proceed according to the following modalities:

– the principles set out above concerning the calculation of each Member State's indicative contribution as well as the possibility to temporarily reconsider it in case of disproportionate migratory pressure should apply;

– a minimum indicative contribution for each participating Member State will be foreseen, so that this target is not reduced exceedingly in case a low number of Member States take part in relocation, and thus to affirm the precedence of relocation upon financial contributions as the way to show solidarity under this mechanism;

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[1]. Calculated by multiplying the total target number of relocations for the Member States by the average of its national gross domestic product in relation to the total GDP of relocating Member States and its population in relation to the total population of relocating Member States (cf. annex for an example on the basis of 31 States (Member States and Associated States)).

– direct financial transfers between Member States, for budgetary simplicity;

– call on the Commission, in consultation with the contributing and benefiting Member States, to determine the Member States to which the financial contribution should be made;

Call on the European Commission, in close liaison with Member States and with the support of the agencies, to ensure the coordination of the mechanism and to monitor the respect of the commitments of the signatories; the coordination role will also include a complete inventory of the needs of the Member States of first entry, including the needs for financing projects in third countries; the Commission will evaluate the financial transfers to be made to meet these needs and monitor their use;

Agree that, on the basis of the needs expressed by the Member States of first entry, the Member States wishing to contribute may provide them with support in terms of services, personnel, facilities (in fields such as reception, border surveillance, control, detention and return); this material solidarity will be counted as financial solidarity in line with the needs assessed by the Commission;

Note that the entire solidarity mechanism is open to associated States;

Agree that the solidarity mechanism shall apply upon signature of this declaration but that solidarity contributions shall start, subject to the inventory of needs having been carried out by the Commission, as from the moment negotiations mandates or general approaches are reached in the Council on the proposals for the screening and Eurodac regulations; relocations could however be performed towards persons arrived in the EU before this moment, and also pledged afterwards; relocations should be supported by EU funding and by the assistance of the EUAA in accordance with its mandate, upon request of the Member States concerned;

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Agree to take stock of the implementation of these commitments before the expiry of this mechanism, one year after the start of its application , so as to decide on its possible prolongation, taking into account the progress made towards the adoption and implementation of the "screening" and Eurodac regulations, the evolution of primary flows and the effective prevention of secondary migratory flows (notably by Dublin); a preliminary review will take place 6 months after the adoption of the general approaches of these regulations and the start of the solidarity operations; the possible impact of this mechanism on the flows will be verified, and possible extension of the scope of the mechanism will be considered;

Commit to maximizing cooperation to tackle secondary migratory flows by increasing the pace of Dublin transfers, while acknowledging the importance of ensuring that beneficiaries of international protection have access to legal mobility between Member States and that the relevant provisions in the Pact should be examined in that respect;

Affirm our willingness to swiftly conclude the first step of the negotiation of the European Pact on Asylum and Migration, of which this Declaration is an essential element, and to continue the negotiations of all the elements of the Pact, within the Council and with the Parliament as soon as possible to provide the Union with the stable legislative framework it needs to meet the asylum and migration challenges ahead.

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