Council of the European Union

Brussels, 27 May 2019
(OR. en)

9511/19

LIMITE

JAI 560
ASIM 64
RELEX 521

PUBLIC

**NOTE**

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| From: | Presidency |
| To: | Delegations |
| Subject: | The future of the EU migration and asylum policy |

## 1. STATE OF PLAY

The 2015 migrant crisis brought migration and related challenges to the top of the political agenda at EU and Member State level. The EU and its Member States responded by putting in place a number of immediate and long-term initiatives aimed at stabilising the situation. On the external front, EU's intense efforts to strengthen cooperation with countries of origin and transit have paid off and delivered concrete results. The EU-Turkey statement and closer cooperation with North African states resulted in a better management of irregular migration flows and new instruments for cooperation on readmission of irregular migrants have been agreed with main countries of origin. Internally, the EU implemented operational solutions, such as temporary relocation schemes or the hotspot approach, and made use of the existing EU crisis management tools[1]. As a result, in 2018, the total number of illegal border crossings at external borders was estimated at 150 000, 92% below the peak year of 2015 and 25% less compared to 2017[2].

1 For example, integrated political crisis response (IPCR) arrangements
2 ISAA report 146

Yet, the situation in the EU neighbourhood, in particular the southern neighbourhood, remains volatile, especially with significant numbers of potential migrants and refugees present in North Africa and the Middle East. The substantial demographic growth forecasted for Africa warrants the need to develop a long-term partnership with the continent.

Successful initiatives to address structural, internal deficiencies of EU policies were notable in border management with the introduction of systematic checks of EU citizens at the external EU border, the new EU IT systems (EES and ETIAS), the interoperability regulation, the enhanced Schengen Information System and most recently the enhanced mandate of the European Border and Coast Guard Agency.

Notwithstanding these important achievements, a number of vital challenges remain unresolved, notably regarding the EU asylum system. Attempts at making the Common European Asylum System (CEAS) more efficient, harmonised, and more stable in the face of future migratory pressures have not been successful. Despite significant efforts and important progress at technical level, it has so far not been possible to find a balanced political compromise on the overall reform. In the meantime, as a more predictable response to the current ad-hoc approach to disembarkation in the Mediterranean Sea and to cope with irregular arrivals, an approach is being developed to offer a more structured mechanism of voluntary support, based on practical experience.

The need to strengthen the capacity of Member States and EU agencies in the field of asylum and migration and to improve cooperation to combat smuggling of migrants is as strong as ever. Member States need to identify a sustainable way forward so as to better prepare for future migration challenges.

In the context of the renewal of the EU institutional cycle, this note sets out the key challenges faced for a future EU migration and asylum policy as a background to a wider reflection on how to deliver on the comprehensive approach to migration.

## 2. KEY CHALLENGES

## I. INTERNAL ASPECTS

A) Reforming the CEAS

Current rules on the cessation and shift of responsibility for asylum applicants together with ineffective Dublin transfers[3] and non-harmonised use of detention[4] make it possible for asylum applicants to move onward to the country of their choice. Limited levels of harmonisation of Member States' asylum systems, for example as regards the duration of the procedure or reception conditions, as well as different standards for recognition[5] and protection offered, have also often led to secondary movements. In June 2018, the European Council recognized that 'secondary movements of asylum seekers between Member States risk jeopardising the integrity of the Common European Asylum System and the Schengen acquis'[6]. While it has so far not been possible to estimate the total number of third-country nationals engaged in secondary movements, the analysis of such movements carried out by the EU agencies[7] provided a comprehensive overview of the phenomenon within the EU by establishing the main patterns and trends. It concluded that the scale of the phenomenon remains undisputable and considerable. At the same time, further assessment of secondary migration movements and their causes is needed, so as to reflect on a possible relation with the obstacles to integration into the society of those granted protection and/or low rate of returns for those finally rejected.

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3 Low rates of successful transfers, due to long appeal procedures in the Member States and non-harmonized use of detention in view of transfer, comparing with important administrative resources involved in processing of requests.

4 Due to either current practices at the level of the Member States, but also to the lack/insufficient capacity of detention centres.

5 For example, the trend of differences in recognition rates continued also in 2018, with largest variations observed for Afghanistan (between 6 % and 98 %) and Iraq (between 8 % and 98 %) - EASO Latest asylum trends, 2018 overview

6 EUCO 9/18

7 EASO, Europol, Frontex: Secondary movements in the EU and Schengen Associated Countries, 25/03/2019

In addition, in the absence of a sustainable mechanism for sharing of responsibility for asylum applicants, frontline Member States lack guarantees from the other Member States regarding their readiness to contribute to an effective burden-sharing in the form of relocation in case of disproportionate pressure.

In 2016, the Commission tabled proposals for the CEAS reform to better equip the system to deal with the various concerns. Much of the debate was influenced by the mandatory nature of the 2015 relocation scheme and exposed divisions between Member States. Although, the relocation scheme resulted in relocation of 34 712 persons from Italy and Greece to some 25 Member States and Associated Countries, it also created a feeling of lack of ownership among some Member States. Until now it has not been possible to find sufficient common ground on the CEAS reform, in particular on the Dublin Regulation and the Asylum Procedure Regulation.

Reforming the CEAS remains essential. A future compromise will have to ensure a more consistent application of asylum procedures and rules regarding responsibility for asylum requests[8], increasing solidarity and the sharing of the burden for assessing asylum claims. This will require a renewed impetus with constructive engagement from all sides in order to rebuild trust between Member States as well as between citizens and public authorities.

One aspect not assessed enough at EU level is the differentiation between Member States as regards integration measures provided to those granted a form of protection. EU law provides for equal treatment with nationals as regards access to the labour market, provisions of social assistance, vocational courses and medical assistance etc. It might, in particular, be worthwhile to assess whether the real prospect of being hired in the local economy as well the different national social protections systems and refugee specific integration measures (language, civic integration courses) – being the competence of the Member States – contribute to creating further secondary migration movements of refugees.

[8] Throughout this note the term asylum requests is deemed to refer to requests for international protection.

B) Return

Low EU return rates remain an important challenge. In 2017, compared with 2016, the EU return rate decreased from 45,8 % to 36,6 %[9]. The migration crisis has also underlined the close structural links between secondary movements and return. The effectiveness of the EU's return policy depends in large part on the cooperation of third countries in identifying, re-documenting and readmitting their citizens. Despite progress made in the form of EU and bilateral agreements and arrangements with a number of third countries, the Member States still encounter difficulties in return and readmission cooperation, especially as regards identification of third-country nationals, issuance of travel documents and acceptance of returnees.

The return rate is also the result of the diverging national practices and different level of efficiency in the Member States as regards the speedy issuance of the return decisions, especially after the decisions rejecting or ending legal stay and their successful enforcement. Inconsistent ways of dealing with the risk of absconding, including detention also play an important role.

Voluntary return of irregular migrants remains the preferred option over forced return, being easier to manage with third countries. However, migrants' willingness to opt for voluntary return depends heavily on the prospect of being forcefully returned. Programmes offering financial or material assistance to those willing to return voluntarily, and programmes that support the economic and social reintegration of migrants in the country of return, can provide an incentive to returnees and help overcome the reluctance of third-countries to cooperate on return. However, they need to be designed carefully so as to not create an additional pull factor and to ensure similar packages are offered.

[9] Return rate is calculated on the basis of the Eurostat statistical data on return, by making a ratio between the number of return decisions issued and the number of return decisions enforced to a third country.

C) Institutional and procedural challenges

The migration crisis of 2015 was the catalyst for much closer coordination between different policy areas with an impact on migration (internal affairs, foreign policy, development aid). The Commission's European Agenda on Migration is a good example of an attempt to bring together different policy strands under one coherent whole-of-government approach. However, there is certainly room for improvement when it comes to overcoming institutional fragmentation at EU level - having the EU and its Member States speaking with "one voice" on migration issues.

During the 2015 migration crisis the EU had recourse to available tools through a process of trying and testing and established new tools when the needs became apparent. Whilst some good practices emerged in terms of generating information and allowing monitoring and at times some coordination of actions on the ground, the crisis laid bare a lack of migration management structures and tools at EU level. The structural setting, the decision-making and implementation procedures have to be better designed to anticipate future volatility and build resilience to unforeseen developments. Continuity must be ensured by formalising the setting so that legacy, lessons learned, knowledge and trust are retained as persons change posts.

This entails a whole-of-government approach capable of mobilising structures, tools, human and financial resources as needed, across the EU institutions and agencies and in full cooperation with the affected Member State(s). This includes a division of responsibilities involving a central level and an operational level in affected countries, where a chain of command is defined from the outset, in order to deliver on political guidance given by the European Council or by the Council and ensure planning of actions to be implemented on the ground. Personnel from Member States and from the agencies with adequate profiles in border control, asylum processing, security, operational planning, logistics needs to be available on stand-by to reinforce the central level and to be deployed in the field accordingly. Financial resources need to be mobilised and disbursed quickly, with fast-track procedures in place. Robust intelligence is needed to provide a sound situational picture, including early warning where timely intervention can avert crises long before they arrive at the external border.

Precise and up-to-date awareness reporting on the migratory situation and a reliable forecasting mechanism are essential to understand the trends and phenomena, to allocate the resources and enhance preparedness at national and EU level. Reliable data and intelligence are indispensable to measure and analyse the trends and to provide a timely and adequate response. Currently Eurostat regularly collects statistics on asylum and managed migration, in accordance with Regulation (EC) No 862/2007. Given the important changes in the phenomenon of migration in the past few years, the shortcomings of this data collection are becoming increasingly apparent. Whilst a useful basis, the intervals inherent in the methodology and the granularity of the Eurostat data collection does not provide an up-to-date and imminent picture on the migratory situation or allow timely contingency planning. In order to bridge the information gap and to fulfil their mandate in the most efficient way, the EU Agencies have developed their own system of data collection. At the same time, the political impact of migration increases the need for availability of migration-related intelligence, which can contribute to building evidence-based migration policies and feed into the public debate. In addition, it may be envisaged to set up a forecasting and early warning mechanism at EU level, which may build on specific instruments developed already by the main stakeholders to provide a short-, mid- and long term (5-10 years) perspective on migration. Further statistics should be collected on different migration aspects, especially as regards migrant smuggling, return, readmission processes with third countries and minors. Also, it is essential that these statistics are more precise and frequent and that cooperation between Eurostat and EU Agencies is continuously improved.

## II. EXTERNAL ASPECTS

A) Mainstreaming migration in external policies

A key component of our relations with third countries is ensuring common and coherent communication among all EU actors. While much has been accomplished through developing closer partnerships with neighbouring countries and regions, such as, the Western Balkans, Turkey, North Africa and Eastern Partnership countries, more efforts are needed to ensure a stronger alignment between the initiatives and messages of EU institutions and those of Member States which have privileged bilateral links with a specific third country. The Council and its preparatory groups should be fully involved in defining common priorities to be implemented and messages to conveyed by the Commission towards third partners in the field of migration. This should be done through a consistent practice of consultation and discussion prior to new engagements with specific partners and whenever relevant for follow-up measures. Such a practice would be important for the EU and Member States to commit to the common track and mobilise their resources and political capital in support.

The other major challenge which remains only partially addressed is tapping into all policy areas and instruments at our disposal in order to obtain results in line with our priorities. The principles guiding the EU's external action on migration set out in the Partnership Framework launched in 2016 are based on results-oriented, flexible, and strategic partnerships and dialogues, tailored to the needs of the EU and the partner countries. The approach includes a system of incentives and leverages through which stronger cooperation on migration is closely linked with and an integral part of the engagement in other policy areas. Also, to equip the EU with such relevant leverage the EU will formally adopt a revised Visa Code in June, which allows to link the visa policy towards a third country with the level of cooperation on migration. The EU and its Member States should look into creating further such links in other policy areas, like trade. In practice, over the last three years negative leverages have been very seldom used. With return rates to the main countries of origin low and in some cases dropping, a more structured common EU understanding on when and how to use conditionality towards third states is needed.

B) Situation in the countries of origin and transit

The situation in some of the countries of origin and transit will continue to be volatile in the coming years. Conflicts, economic and social crisis, the impact of climate change and other major socio-economic factors such as demographic growth in the developing world, especially across Africa, might lead to migration flows, which risk putting pressure on the EU's external borders. The Eastern, Central and Western Mediterranean are expected to remain the main migration routes, but the risks for the EU's Eastern border should not be underestimated. The protracted refugee situations in some of the countries close to the EU must be also taken into consideration.

In the Southern Mediterranean, the political and security situation in Libya will continue to be in the spotlight. The political and socioeconomic challenges in the other Northern African countries may result in continuous migratory pressure in the region and towards Europe. In the Eastern Mediterranean, there are no immediate prospects of stabilisation in Syria, while Turkey, Lebanon and Jordan will still need the EU support and solidarity to deal with the substantial presence of refugees. In this context, the role of Turkey as transit and destination country will remain crucial and a reflection on our longer-term cooperation with the Turkish authorities is needed.

The overall situation in the Western Balkans is far from the situation of four years ago. Nevertheless, we need to remain vigilant and pro-active in our support and take coordinated action.

Beyond the Mediterranean region, the EU should step up its partnership with the Sahel and sub-Saharan countries, as well as the countries on the so-called Silk route, to address the challenges in migration management. The root causes of migration in these regions need to be addressed in our relations with key third countries in order to make any approach sustainable.

C) Economic and social challenges of migration

The increase in irregular migration flows and asylum applications at the peak of the migration crisis has had a considerable impact on the perception of migration, both within the EU and in partner countries. The focus within the EU has shifted more towards the need to control irregular migration and away from new visa liberalisation dialogues, possible measures to support legal pathways and integration of third-country nationals in the EU.

The legal migration instruments remain, however, crucial as part of a coherent comprehensive approach. Since 2003, the EU has developed a common framework for the management of legal migration. This framework is built on a sectorial approach, which means that the EU measures on legal immigration cover the conditions of entry and residence for certain categories of third-country nationals. Member States remain free to issue residence permits for other purposes not regulated at EU level. Member States also remain competent to determine the number of migrants to be admitted for work purposes from third countries. Both the negotiations on different legal migration instruments in the Council as well as their subsequent implementation have shown that this is a sensitive area for Member States, closely linked to the management of their labour markets. For this reason, most Member States seem to want to keep their national competences and are reluctant to adopt further common EU measures in this field. At the same time, the EU continues to face long-term socio-economic and demographic challenges (e.g. a shrinking working age population, skills and labour shortages in key economic sectors), which could partially be addressed through a well-managed legal migration policy, as well as effective integration measures for third-country nationals legally residing in the EU.

## 3. NEED FOR A COMPREHENSIVE APPROACH

As we embark on a reflection on how to find a way forward towards an efficient EU migration and asylum policy, it is useful to recall the key conclusions that stem from our discussions so far. EU leaders have agreed that a comprehensive approach to migration, which combines a more effective control of the EU's external borders, increased external action and improved internal system for dealing with asylum requests, was a precondition for a well-functioning EU policy. A number of strands of action, in line with those already set out by the European Council[10], can be highlighted:

- a pragmatic, flexible and coordinated use and implementation of all available EU and Member States' instruments;
- support for Member States directly affected or involved, including through continued support from EU agencies;
- strong cooperation with international partners, including with countries of origin and transit;
- reduction of incentives for illegal migration through effective return and sustainable reintegration as well as increased fight against illegal employment of third-country nationals;
- dismantling migrant smuggling crime networks through better information gathering and sharing, as well as operational cooperation between Member States and with third countries;
- expanding EU resettlement schemes and developing them together with international partners (UNHCR);
- legal migration and integration;

[10] EUCO 14/17
EUCO 9/18

- creating and applying the necessary leverage, by using all relevant EU policies, instruments and tools, including development, trade and visa to achieve measurable results in terms of preventing illegal migration and returning irregular migrants.

Delegations are invited to indicate, taking account of the above strands of action and their different state of progress, how best to give a new impetus to delivering on the comprehensive approach to migration. On that basis, the incoming Presidency will continue to work over the next months to detail the specific work strands.