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From: Presidency  
To: Delegations

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Subject: Gradual approach on migration and asylum: four issues to discuss further

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During the informal working lunch at Ambassadors level on 12 January, the Presidency presented the method proposed for a gradual approach on migration and asylum, on the basis of the attached paper. The COREPER will revert to this issue by the end of January, in order to prepare the political discussion that will be held at the informal JHA ministerial meeting on 3 February.

As mentioned on 12 January, it would be useful to have a deepened discussion on the four following items, while maintaining the overall approach proposed by the Presidency :

- Checks and registration at the external border ;
- Financial / material support to Member States in charge of protecting the external border ;
- EU return and readmission policy ;
- Support in terms of reception efforts, including the idea of a mechanism for the relocation of persons in need of protection, particularly with regard to the provision of assistance at sea, as well as alternative solidarity contributions.

## **I. Checks and registration at the external border**

### **A. Screening at the external border**

The screening would consist of : a preliminary health check, a vulnerability check, an identity check against information in European databases, a security check through a query of relevant national and Union databases.

#### *a) Scope:*

At the external borders, screening would apply to all third country nationals who do not meet entry conditions at the external border, i.e. to:

- all third country nationals apprehended in connection with an unauthorised crossing of the external border of a Member State and who do not fulfil the entry conditions;
- third country nationals who are disembarked following a search and rescue operation and do not fulfil the entry conditions;
- third country nationals who have made an application for international protection at the external border crossing points or in transit zones and who do not fulfil the conditions of entry.

*Question 1 : would you see any need to change this scope, without weakening the protection of our external borders at a first stage?*

#### *b) Modalities of checks :*

- Flexibility for locations :

MS organize their border surveillance and control according to the nature of their borders (air, land, sea). In addition, large number of persons unauthorized to enter at the external border could create public order difficulties. For these reasons, flexibility can be considered, as regards the use of other locations than the border itself, when checks are not possible at the border.

Question 2 (locations): do you consider that some flexibility should be added as regards the choice of locations where the checks should be achieved ?

- Flexibility for means to prevent any absconding :

Limiting the risk of absconding is essential since one of the objectives of screening is to prevent and deter illegal entry into the EU territory. This can be achieved through deprivation of liberty, with a proportionate use of detention (a proportionate use could include : a limited time ; less coercitive measures in places where the risk of absconding is limited, etc).

As a first step, however, alternative ways to ensure MS keep irregular migrants at the disposal of the authorities could include : home custody ; obligation to register/appear everyday, etc. At the same time, commitments to increasing detention capacities could be considered.

Question 3 : what would be the appropriate means to limit the risk of absconding?

- Legal parameters :

Question 4 : do you agree that the principle of non-entry, meaning that MS should not be forced to accept the presence of persons having illegally entered their territory unless or until they authorize them to do so, would be helpful in order to prevent illegal entries ?

#### B. Registration in EURODAC :

EURODAC is an important tool and a missing component of the interoperability of the European databases, in order to have the most complete picture of third-country nationals entering the territory of the European Union.

*a) Creation of a “SAR” category :*

The information on whether a person has been disembarked after a search and rescue operation improves knowledge on the migratory routes used by applicants. In addition, this could help voluntary Member States to define the implementation of the discretionary clause by making offers of reception based on the criteria defined, if necessary, within a relocation mechanism associating several volunteer Member States. Criteria set by MS could relate to specific categories (vulnerable people such as unaccompanied minors or accompanying children, families with children, single women).

*Question 5: do you support the creation of a SAR category in the EURODAC database ? For what purpose should we use that category ?*

*b) Time limit for collecting and transmitting data) :*

This time limit for collection and transmission of data to the central system should be specified. A question was raised about extending it from 3 days to 5 days, for the purpose of registration at the external border.

*Question 6 : What would be a relevant time limit (3 or 5 days)? Can we consider a support from EU agencies, including registering on behalf of MS in case of mass influxes ?*

## **II. Financial and material support to Member States in charge of protecting the external border**

Checks, registration and processes involve costs bearing mainly on some Member States. To ensure protection of EU external borders, Member States should receive support, which can take various forms that could be combined. Experience shows that a multifaceted support is really helpful if it comprises financial, logistical, material and human resources tailored to the Member States' needs and suited to the requirements of the local situations. That implies also giving reassurance to the concerned Member States as regards the continuity of the support provided.

## A. Financial contributions

The Multiannual Financial Framework has set the available resources and modalities for EU funding support. The new EU funds provide now for adjusted national envelopes. It also foresees a flexibility mechanism that would allow increasing national envelopes of specific Member States if the pressure increases:

- With an overall budget of EUR 6.2 bn, the Border Management and Visa Instrument (BMVI) can finance (i) facilities, systems and services required at the border crossing points or for border surveillance; (ii) equipment for border control, including transportation and IT systems; (iii) identification process, fingerprinting, registration, security checks, and other external border management processes.
- With an overall budget of EUR 1.9 bn, the Internal Security Funds (ISF) can finance equipment, means of transport, communication systems and security facilities.
- With an overall budget of EUR 9.9 bn, the Asylum, Migration and Integration Funds (AMIF) can help Member States to ensure the uniform application of the Union acquis including financing facilities, procedures and services, material aid, including assistance at the border. Under the AMIF Thematic Facility, a new Union action to support Member States under pressure will be launched shortly.
- Member States can also make use of the Recovery funds to address migration needs.

## B. Support from EU Agencies

The EU agencies enhanced mandates (notably : FRONTEX, EUAA, EUROPOL) would allow a reinforced support to Member States:

- FRONTEX can deploy standing corps officers to carry out the screening, including the identification, fingerprinting and debriefing, as well as interviews or registration in Eurodac. It can also provide experts to support return activities such as identification and determination of nationality, return counselling, promotion of voluntary return and reintegration, support to forced returns (i.e. escorts and FAR-specialists). The Agency can also provide equipment for border controls (patrol cars, transport cars, mobile offices, aerial surveillance, drones, etc.).
- EUROPOL can provide human resources for the screening process, particularly to check the Agency's databases or to request other Member States or third countries to provide relevant data, and support for second-line security checks. EUROPOL can also provide tailored analysis products, support Member States in combating migrant smuggling and related crimes facilitated, promoted or committed using the internet.
- EUAA can make experts available and provide tailored-made solutions. For example, the Agency may provide personnel for information provision, screening (e.g. the initial screening interview, identification of vulnerabilities), interpretation and translation services, register applications in Eurodac, up-to-date information on countries of origin or help to draft decisions. The Agency can support with the management and provision of reception, including on contracting of the adequate containers adapted to the needs on the ground, as well as with the design and putting in place of adequate standards of reception facilities.

### C. Support by other Member States

We can also consider inter-governmental support which would promote solidarity between Member States and would help to restore mutual trust.

*Question 7: do you identify any gaps in these various forms of support ?*

### **III. EU return and readmission policy :**

#### A. External aspects

Political unity, strong coordination and use of all relevant leverages are key elements of an effective EU return and readmission policy. The following parameters could be considered :

##### *a) Enhanced governance for an effective use of the tools at our disposal :*

There is a need to further coordinate on external dimension of migration. The Coreper has recently created the “MOCADDEM”, which aims at fostering and operationalizing the use of every leverage in order to get a stronger, concrete and operational cooperation with third countries. The MOCADDEM will soon start working on priority countries, notably with a view to improving readmission cooperation, informed also by the coordination carried out by VP Schinas and Commissioner Johansson. The MOCADDEM should focus on addressing bottlenecks in this area and aiming at proposing a coordinated approach to address them. As concluded by the European Council, this approach should take stock of all leverages available : political engagement, capacity building and technical cooperation, EU and national financial means, possible use of article 25a of Visa Code, legal migration, trade policy.

*b) Reinforcement of cooperation on return and on readmission instruments :*

17 readmission agreements and 6 administrative arrangements have been concluded with third countries. If substantiated with a political involvement, the application of those instruments remains the best way to reach a satisfying cooperation. Nonetheless, there are still pending readmission agreement negotiations with strategic third countries, while some others have not yet expressed willingness to engage in a formal exchange on readmission at a European level. We could reflect on a strategic approach to foster the conclusion of new agreements or arrangements and better implement existing ones. This reflexion should also encompass the role of Frontex : models for working arrangements and status agreements will be very helpful to allow the agency to cooperate operationally with third countries, both on readmission and prevention of departures. The implementation of the mechanism under 25a of the Visa code is another tool to be used.

*Question 8 : Would you agree to request the Commission to present to the Council a strategic approach on the way forward on existing mandates for readmission agreements and the opportunities to conclude new readmission instruments, as well as on the means of Frontex in matter of international cooperation?*

*B. Internal aspects:*

*a) Pooling efforts for EU return policy : the role of the “EU return coordinator”*

The Commission confirmed that the appointment of a “Return coordinator” could be completed by March 2022. This may be useful to encourage best practices sharing and improvement of internal aspects of return. He/She could as well help matching the capacities and the needs in the MS in order to facilitate solidarity. For instance, by facilitating secondment of experts (counselling on return), or pooling means of assistance to voluntary departure, facilitating dialogue from MS for obtaining travel documents on the behalf of others. Here as well, there is a need to enhance support provided by Frontex (escorts and support officers, return operations for one or more MS, flight booking, etc.)



*Question 9 : Would you support a voluntary pooling of national resources in matter of return and readmission, under the steering of the return coordinator ? How could the coordinator articulate his/her work with the external dimension ?*

*b) EU legal framework (“Return Directive”) :*

The Council has adopted almost 2 years ago a partial general approach on the recast proposal submitted by the Commission in September 2018. The opportunity to resume work on the Return Directive could be considered, taking into account the fact that the European Parliament has not adopted a position yet and seems to link the Return Directive discussions with other negotiations in the field of asylum and migration.

*Question 9a : Do you consider this legislative recast as a key element of a more effective EU return policy ? If so, what should be the best process ? Would you agree to resume work in the Council ?*

**IV. Support in terms of reception efforts, including the idea of a relocation mechanism, as well as alternative solidarity contributions :**

**A. Principles :**

As a first step, support in terms of reception effort could take the form of a mechanism for the relocation of persons in need of protection, particularly with regard to the provision of assistance at sea, within an inter-governmental framework. Member States would take part on a voluntary basis.

This mechanism should be :

- simple (avoid complexity in criteria or processes) ;
- pragmatic (respond to real needs of frontline MS) ;
- predictable (get a clear understanding of volumes, timelines and MS' commitments) ;
- credible (as regards commitments as well as capacities).

It should be operational without delay and involve a sufficient number of Member States to allow a balanced and sustainable distribution of the effort.

As regards legal aspects, such relocations would be implemented on basis of article 17 of Dublin Regulation (discretionary clauses).

*Question 10 : would you agree to work on that basis ? How to ensure a sufficient level of participation from Member States ?*

B. Scope :

Building on previous experiences (such as the “Valetta Mechanism”), we could design the new mechanism in order to effectively alleviate the pressure bearing on some MS' asylum systems, taking into account the specific situation of each MS.

The scope should be precisely defined. The mechanism could apply to persons in need of protection, particularly to those rescued at sea then disembarked after a “SAR operation”.

C. Process :

a) *Relocation process* :

This process should be defined through a consultation between participating Member States. It should specify the practical conditions of a physical transfer of the persons concerned to the territory of voluntary Member States, within a time scale allowing for effective and quick alleviation of migratory pressure.

Participating Member States could have some level of discretion as regards the designation of persons to relocate to their territory, including through preliminary interviews.

*Question 11 : Should we ask the Commission to play a role in coordinating the functioning of this mechanism ?*

*b) Monitoring :*

A monitoring process should be set up in order to provide guarantees as regards the mechanism's predictability and credibility. Monitoring should include a statistical follow-up of the number of persons effectively relocated (with details on : country of origin / MS of disembarkation / MS of relocation).

*c) Alternative solidarity contributions :*

Member States not participating to the above framework would have to provide alternative solidarity measures, which should include direct financial support to both frontline Member States and voluntary Member States. This could also include material support or support in terms of human resources.

*Question 12 : what should we expect as a sufficient solidarity contribution from MS not participating to the relocation mechanism ?*