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**NOTE**

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From:	Presidency
To:	Strategic Committee on Immigration, Frontiers and Asylum
Subject:	A new way forward on European migration and asylum policy - Presidency discussion paper

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**Context**

The new Pact on Migration and Asylum presented by the Commission on 23 September 2020 is a good basis for making a new start in the debate over European migration and asylum policy. Our aim must be to establish a fair and functioning overall system that meets practical challenges and provides faster, more efficient and crisis-proof procedures, while respecting the fundamental rights of migrants and applicants for international protection.

Germany's Council Presidency strives to reach at the JHA Council in December a political understanding on the key aspects of the new Pact on Migration and Asylum which will reflect the status of the debate so far and define guiding principles for future debates. The focus should be primarily on key points on which broad common agreement already exists, so as to pave the way for also finding solutions for challenging issues, which take account of the concerns of all Member States (questions one and two.) In addition, we would like to address with questions number 3 and 4 two of the key issues in more detail.

## Questions for discussion

For the discussion in SCIFA on 30 October regarding the document to prepare the JHA Council meeting on 13 November, we would like Member States to answer the following questions:

1. Do Member States agree that the attached document covers the key elements of migration and asylum reform?
2. Do the Member States share the views expressed above regarding specific areas in terms of general agreement and need for further discussion?
3. Are the proposed instruments and initiatives well tailored to optimize the efficiency of returns, in particular in relation to the pre-entry phase? What additional concrete measures, if any, may be required?
4. Do Member States agree that the mandatory solidarity mechanism should combine flexibility with a guarantee of effectiveness for Member States under pressure? In exercising a choice between different solidarity measures, in particular relocation and return sponsorship, what elements do Member States want to see integrated into the mechanism to ensure its satisfactory functioning?

## Fundamentals

1. The New Pact on Migration and Asylum presented by the Commission on 23 September 2020 is a good basis for making a new start in the debate over the European migration and asylum policy. Our aim must be to establish a fair and functioning comprehensive system that meets practical challenges and provides faster, more efficient and crisis-proof procedures, while respecting the fundamental rights of migrants and applicants for international protection.
2. The **functioning of the comprehensive system** requires the following: strong systems in each Member State; mutual solidarity support for the most affected Member States – especially for Member States of first arrival; a balance of solidarity and responsibility between all Member States; and a significant strengthening of relations with countries of origin and transit. Furthermore, for migration management to be effective it requires a distinction, at an early stage, between persons entering the EU lawfully or unlawfully and between asylum applicants in need or evidently not in need of protection. In this process, the Council reaffirms the Union's willingness to afford protection of those eligible for international protection; irregularly arriving persons not eligible for protection should in principle not be authorised to enter the EU, or leave the EU again as soon as possible. A sustainable asylum system requires an effective control of the external borders. An improved European return policy and fight against migrant smuggling is also key to this. The core elements of solidarity and responsibility, as well as the balance between those elements and the corresponding obligations for the Member States, must be discussed together with a view to a compromise that takes into account the concerns of all Member States. Finally, legal migration and legal pathways for persons in need of protection continue to be an integral part of a balanced migration concept.

## Key elements of a comprehensive approach

3. The Council expressly welcomes the fact that the new Pact is designed to strengthen the **external dimension** of European migration policy. All aspects of migration and forced displacement can only be addressed effectively in cooperation with third countries, and through a whole-of-the-route approach. The problem of irregular arrivals to the European Union must be addressed as early as possible. This requires the efficient implementation of a coherent and comprehensive approach where the European Commission takes on a strong coordinating role in cooperation with Member States. This includes all major areas such as fight against migrant smuggling, border management, protection of refugees, mitigating the root causes of irregular migration and flight, legal migration and legal pathways and return and reintegration. A key factor here is strengthening comprehensive, balanced and tailor-made partnerships with relevant countries of origin or transit and host countries, in the mutual interest.<sup>1</sup> The Council requests the European Commission to address partnerships with prioritised third countries, in close consultation with the European External Action Service (EEAS) and the EU Member States and to keep the Council closely informed of the envisaged steps including concrete objectives for relevant third countries. North Africa, the Western Balkans, Turkey and sub-Saharan Africa and the so-called Silk Route should be prioritised, taking into account, inter alia the number of asylum seekers coming to Europe and the average EU-wide rejection rate.
  
4. It is important, already today, to swiftly promote **joint support and coordination activities** with major partner regions, such as the Western Balkans initiative and the operational Mediterranean initiative, whilst avoiding duplications. Successful examples of cooperation on migrant smuggling should be replicated and expanded as part of the new action plan on migrant smuggling.

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

5. For this reason, a **strong and effective management of the EU's external borders** must provide for an effective control of migration into the European Union. A priority of the Member States in this regard is the full implementation of the European Border and Coast Guard Regulation and thus a leading role for Frontex in the EU's common return system, including appropriate funding.
6. **Managed and orderly migration at the external borders of the EU** sends a signal to the rest of the world that Europe has a strong common asylum and migration policy, under which only persons presumably entitled to protection may enter the EU. This is a key issue as such procedures help to prevent irregular primary and secondary movements. It is also an issue of security for the Schengen area. It can build the confidence of the citizens and Member States in the area of free movement and improve the functioning and security of the Schengen area.
7. This means that the proposed **pre-entry procedure**, consisting of a mandatory screening (identity, health and security checks) as well as mandatory asylum and return border procedures, is in the interest of all Member States. The functioning of the overall system hinges on the practicability of the procedure; tailored and reliable support by EU agencies and Member States; and effective European funding programmes benefiting states at the external borders.
8. Here, it needs to be examined how:
  - a. to practically prevent irregular entries before completion of the procedures;
  - b. to establish objectively identifiable criteria for the applicability of the mandatory asylum border procedure, which are resistant to misuse;
  - c. to enhance the return of rejected applicants for asylum. As regards the last-mentioned aspect, the return border procedure and the solidarity provided under return sponsorships should contribute;

- d. to consider the legitimate interests of vulnerable persons, especially unaccompanied minors;
- e. to ensure adequate accommodation and care and prevent the overburdening in particular of border facilities and connected supply infrastructure.

Fundamental rights of persons concerned, including effective remedies, must be observed.

- 9. All Member States commit to **mutual support**, especially in cases of pressure of one of the Member States. There is broad agreement for having a mechanism of **mandatory solidarity** in cases of crisis situations as well as in cases of migratory pressure. The mechanism to be triggered and implemented at short notice, should involve the Member States as far as possible. Owing to their geographical situation, the Member States at the EU external borders have a special role in the functioning of the European asylum system, and they must not be left without support. Owing to the particularities of disembarking after rescue at sea, the implementation of an appropriate special solidarity mechanism for such cases should be discussed.
- 10. Since every Member State has to face its own challenges and needs, the mechanism must be able to provide for tailor-made measures of solidarity. The most important solidarity provisions are those which allow a reduction of pressure on the Member States of first arrival. This confirms the importance of relocation or initiatives to increase the effectiveness of return policy, in particular return sponsorships. Support in the area of return is an important element of solidarity aiming at a clear reduction in the number of persons obliged to leave the most affected Member States. It is important to give the Member States the possibility to contribute to the capacity building of Member States in need of solidarity, but also to consider other complementary ways of providing solidarity to those Member States. Verifiable improvements in the external dimension are of benefit to all Member States in the medium to long term, especially in reducing migratory pressure or expanding return possibilities.

11. Relocation or return sponsorships can be mandatorily required to ease the burden of a Member State. Further consideration should be given to the conditions under which Member States carry out relocation and return sponsorships, and to the conditions under which illegal border-crossings into Europe can be avoided.
12. If the overall system is to function, it must prevent **abuse of the asylum system**. To avoid such abuse, the Member State responsible for carrying out the asylum procedure must be quickly and clearly identified, after the screening and possible asylum border procedure. Unbureaucratic transfers (e.g. notification procedures while guaranteeing effective legal review) and the enforcement of rules on responsibility and time limits (e.g. longer transfer time limits) are important in order to prevent abuse. Admission benefits and services shall in principle only be provided in the Member State responsible. And the goal must be that applicants in general have to remain in the Member State responsible while their application is reviewed, including considering to create incentives for applicants to comply.
13. A functioning asylum system requires an improved **return policy at European level**. This includes returns from all Member States, and the proposed return border procedure. Voluntary return with adequate measures for sustainable reintegration is a key element. The Council therefore strongly welcomes the establishment of a new assertive Return Coordinator of the Commission who is expected to play a key role in improving the effectiveness of returns and reintegration. Together with the High Level Network for Return, this will be an important step, which will help to strengthen EU return policy as required. In its engagement with third countries, the Commission should effectively reflect the EU's interests with regard to efficient returns and sustainable reintegration.

14. A swift adoption of the recast of the **Return Directive** is important in order to make the procedure efficient and effective and to harmonize national provisions in this area. The Council therefore calls upon the European Parliament to grant as soon as possible a mandate to begin negotiations on the Directive.
15. A further key element is the improvement of third-country cooperation on returns – especially by ensuring that existing **readmission agreements** and arrangements are fully implemented. The Council urges the Commission to launch initiatives to conclude new agreements and arrangements as part of the strategic approach with the objective of improving effective cooperation on returns.
16. The Council strongly welcomes the proposed mechanism in relevant EU policy areas to create appropriate incentives to improve cooperation with third countries on returns (a coherent approach); an important first step towards this will be the Commission’s report on the **leverage provided by Article 25a of the Visa Code**. The Council asks the Commission to exploit the full potential of this report in order to improve the level of cooperation on readmission with third countries by creating incentives to allow readmissions.
17. Close cooperation with third countries is also essential in the key area of **voluntary return** and reintegration. An important part of this is identifying new approaches in partnership with third countries and better connecting them with other initiatives in the area of development cooperation and national strategies. There is also a need to develop a new approach to designing and implementing programmes in support of returns and sustainable reintegration. The Council urges the Commission to make rapid progress with the strategy on voluntary return and reintegration and to welcome input from Member States in this regard.
18. The relevant **EU agencies** have an essential role in providing operational support to Member States. In addition to the new mandate for the European Border and Coast Guard, it is of central importance to quickly upgrade the European Asylum Support Office (EASO) to the status of a full EU agency (EUAA Regulation).

19. It is also essential to have a **European digital infrastructure** that supports European migration and asylum management. There is full support for the Commission's aim to further intensify information sharing at European level, to be achieved largely with the implementation of the interoperability regulations. This includes creating the legal foundation for an improved EURODAC database.
20. **Legal migration** is an integral part of a well-balanced, managed and orderly migration strategy. The European Union must do better in the international competition for highly qualified third-country nationals. To achieve this, a more attractive Blue Card is needed, designed with the flexibility necessary for national labour markets. The Council will also join in the discussion on developing legal migration into the EU. The Council supports better implementation and stronger coherence within the existing legal framework, but only a few Member States see a need for new areas of EU legislation on legal migration. It could still be conceivable to discuss jointly agreed provisions in EU law for certain other categories of third-country nationals, such as mobile workers or service providers; the vast majority of Member States however is not in favour of an expansion of the *acquis* to include low- and medium-skilled third-country nationals.
21. People in need of international protection must be supported, in line with our humanitarian principles. The **resettlement** commitments of Member States and the **establishment or strengthening of additional legal pathways as well as community sponsorship programmes** should therefore be driven forward on a voluntary basis.
22. We welcome the intention of the European Commission to draw up another **Action Plan on Integration and Inclusion**, as a follow-up to the 2016 Action Plan on Integration.

23. The EU's **resilience and flexibility in dealing with crisis situations should be strengthened**. There is wide support for the Commission's proposal to establish an EU mechanism for Preparedness and Management of Crises related to Migration on the basis of the Council's Integrated Political Crisis Response arrangements, in particular the swift establishment of the EU Migration Preparedness and Crisis Management Network. The intention is to make the mechanism for preparedness and management of crises fit for the future, in line with the constant importance of monitoring and controlling migration. This includes strengthening existing early warning systems at the European level and looking into the use of further digital tools to improve forecasting capabilities. The spread of digital technology should be increased in migration management.

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