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From:	Presidency
To:	Strategic Committee on Immigration, Frontiers and Asylum
Subject:	Convergence of decisions on applications for international protection - Discussion paper

I. Convergence of asylum practices in the light of the Pact

Under the French Presidency of the Council of the European Union, Member States agreed a Roadmap on the convergence of asylum practices (ST 10634/22). The objective of this Roadmap is, more specifically, to promote the Common European Asylum System (CEAS) which provides for greater convergence of practices and decisions by both the determining authorities and the second instance authorities of the Member States competent on asylum matters, so that the place where the application is lodged is not decisive in the outcome of the procedure.

Member States, the European Union Asylum Agency (EUAA) and the Commission were invited to expand joint activities and increase cooperation on matters relating to operational standards, indicators, guidelines and good practices, as well as country of origin (COI) information and country guidance. In this context, the EUAA was also specifically invited to launch a pilot study, in close cooperation with Member States, to analyse decision-making practices and the origin of differences in protection rates between Member States, with particular regard to countries of origin for which guidance notes had been developed by the Agency. The work on this pilot study has now been concluded and can be found in document WK 1800/2024.

In conjunction with the finalisation of the legislative work on the EU Migration and Asylum Pact, this is an opportune moment to take stock of the Convergence Roadmap. The Pact offers huge potential for more convergence, not least since the legal instruments related to asylum procedures and qualification have become regulations that do not require transposition, hence reducing the risk of diverging national interpretations. At the same time, it is also clear that greater convergence in asylum decision-making will support the operationalisation of the Pact. For example, greater convergence in asylum decisions will support the efficient application of accelerated and/or border procedures for applicants coming from countries with a low recognition rate. Increased convergence on asylum decisions will also help to reduce incentives for secondary movements and thereby support the responsibility and solidarity system set up under the Asylum and Migration Management Regulation (AMMR).

This paper provides an overview of the main results of the EUAA pilot study on convergence. Against this background, delegations are invited for a first general reflection on further ways forward towards greater convergence, and the nexus between convergence and the implementation of the Pact. The outcome of our reflections and discussions can also feed into the expert conference entitled “*Convergence in asylum decision-making: taking stock and charting paths*” to be jointly organised by the Belgian Presidency and the EUAA on 18 March 2024 in Brussels, where experts will be able to discuss more concrete steps on convergence that can advance the common asylum system and ensure that it is both fair and efficient.

II. Main Results of the EUAA Pilot Study (WK 1800/2024)

The EUAA designed the study in close collaboration with EU+ countries¹ and their active participation enabled the production of this evidence-based, in-depth analysis, generating new insights into the main factors driving the current differences in recognition rates. This participatory study explored two closely linked dimensions of convergence:

- a) Convergence of *outcomes* from examination of international protection applications;
- b) Convergence of decision-making practices.

¹ EU Member States, Norway and Switzerland.

It focused on the examination of cases concerning Afghanistan and Syria, and to a lesser extent concerning Iraq, Somalia and Nigeria. The analysis also looks into the topic of convergence in relation to both the first administrative instance and to the decisions taken by the appeal instances in EU+ countries.

Variation in recognition rates and convergence: state of play

The study offers a validated and jointly agreed framework for measuring convergence within the meaning of decreasing variation in recognition rates over time. Using a well-established statistical method (standard deviation model), it provides an overview of the trends observed since 2017 on five prominent countries of origin covered in the EUAA country guidance documents.²

As of 2022, in comparison with the variation in recognition rates observed in 2021, this model demonstrated notable convergence for the two main countries of origin in the EU+, Afghanistan and Syria, as well as for Somalia. For Afghanistan, the variation decreased by 4 percentage points to 26 (nearing the threshold for medium variation), while for Syria, it was low for the first time, at least since 2017, at 9 percentage points (decreasing from 18). For Somalia, the variation was classified as medium at 22 percentage points (compared to 26 in 2021). On the other hand, some divergence was noted with regard to Nigeria (from 8 percentage points in 2021 to 9 in 2022) and Iraq (increasing from 26 percentage points in 2021 to 29 in 2022).

The trends at the appeal level were different and variation remained high for both Afghanistan (from 27 percentage points in 2021 to 35 in 2022) and Syria (from 36 percentage points in 2021 to 34 in 2022).

² The agreed classification considers variation under 10 percentage points as low; variation between 10 and 25 percentage points as medium; and variation above 25 percentage points as high (with the maximum being 71 percentage points). A cut-off of 200 decisions at first instance and 100 decisions at appeal instances is applied for an EU+ country to be included in the calculations on annual variation of recognition rates.

Main drivers of variation in recognition rates

The study's findings emphasise that the observed variations in recognition rates result from the complex interplay of multiple interconnected factors. Some of these factors are inherent to asylum. While they can be studied and their impact explained, they do not need to be remedied to achieve effective convergence within the Common European Asylum System (CEAS). The elements pertaining to the national caseload are prime examples of such factors. In conjunction with the obligation to examine applications for *international* protection individually and objectively, these elements correlate with expected and justified differences in recognition rates.

Other drivers of variation in recognition rates stem from differences in national systems and decision-making practices influenced by national policies, guidance, and jurisprudence. These variations manifest across various stages of the decision-making process, from the examination of admissibility (e.g. for subsequent applications or the application of the safe third country concept), to personal interviews, evidence assessment and legal analysis at the first instance, and the various aspects of examination of the application at appeal level.

Way forward

Addressing the second category of factors outlined above through common standards, policies and practices can contribute to meaningful and effective convergence. The study proposes the next possible steps in the roadmap towards greater convergence, noting the important positive impact which the EU Pact on Migration and Asylum is expected to have, while also stressing those aspects that are already available to Member States and relate more closely to coherent implementation of the legal framework when examining individual applications for international protection. Investing further efforts at these levels can bring further convergence in the asylum system together with increased quality and efficiency. This will also be the focus of the abovementioned expert conference on 18 March.

More specifically, the EUAA has identified, on the basis of its study, the below areas where further steps can be taken with a view to achieving greater convergence:

1. One important step towards greater convergence will be the forthcoming **adoption and operationalisation of the EU Pact on Migration and Asylum**. While the imminent adoption of the Pact is the prerogative of the EU legislators, its consistent and effective implementation will require collaborative efforts from the European Commission, EU agencies and various authorities within Member States. The examination of applications for international protection would involve national determining authorities as well as the appeal bodies responsible for international protection matters.
2. The **jurisprudence of the Court of Justice of the European Union (CJEU)** is a key tool for promoting greater convergence. National appeal bodies can continue to identify areas within national practice and jurisprudence where further convergence is necessary and can launch relevant requests for preliminary rulings. Furthermore, when a relevant judgment is issued it should be reflected in relevant guidance, training and decision-making practices. Member States, in efforts supported by the EUAA and with the oversight of the European Commission, should ensure that this is done consistently at first instance and in the decisions of appeal instances.
3. The **EUAA provides a range of tools** that aim to promote greater convergence in correct and efficient implementation of the EU legal framework. In order to realise the actual convergence potential of these tools, Member States should prioritise their use, where available, over national equivalents. To that end, Member States and the EUAA should promote, enable and facilitate the direct use of EUAA support tools by practitioners. Simultaneously, the Agency, jointly with Member States, will continue to ensure that the EUAA tools are relevant and up-to-date, and offer clear, actionable guidance. If resources permit, the EUAA jointly with Member States should also further expand the geographical scope of the EUAA country guidance documents.

4. The EUAA will, furthermore, continue to improve the **convergence analysis**. Based on the evaluation of the pilot study, the Agency, with input from the European Commission and Member States, will design a methodology for regular monitoring of the progress made on the necessary actions, as well as other activities contributing to effective convergence in the examination of applications for international protection. The active contribution of Member States in this work would be paramount.

III. Proposed discussion points

- The French Roadmap on the convergence of asylum practices puts forward a number of principles and recommendations for the Member States, the Commission and EUAA. The Member States were invited to increase the involvement of their national asylum authorities in EUAA activities and to continue to use the methodologies developed by the EUAA on COI information and training. The EUAA, for its part, was invited to launch a pilot study on convergence, expand the list of countries of origin for which joint analysis and guidance notes are prepared; and increase the activities for the benefit of national courts competent on asylum matters. Progress has been made at the different levels and the publication of the EUAA's pilot study is one of the concrete results.
 - 1) *How do delegations view the progress made under the Roadmap? Which actions towards further convergence in asylum decision-making may require further attention?*
- As also identified in the EUAA's pilot study, the EU Pact on Migration and Asylum provides good potential for more convergence, in particular since instruments related to asylum procedures and qualification have become regulations that do not require transposition, thus reducing the risk of diverging national interpretations. Conversely, it is also clear that greater convergence in asylum decision-making will support the operationalisation of the Pact, for instance in the context of applying accelerated border procedures to people stemming from countries with low recognition rates.
 - 2) *In view of the findings in the study - related to the Pact, the jurisprudence, and tools – please identify the elements which you see as fundamental for securing greater convergence in the operationalisation of the Pact.*

- Other than the potential of the Pact, the EUAA’s pilot study also identified additional areas that can support the work towards further convergence. These include the leveraging of European jurisprudence as a tool for fostering greater convergence, the use and prioritisation of EUAA tools, as well as the improvement by the EUAA of convergence analysis, including through the design of a methodology for regular monitoring of progress made.
- 3) *How do Member States monitor and implement pertinent CJEU judgments in the area of asylum decision-making? How are these judgments taken into account in the decision-making processes (e.g. guidance, training and decision-making practice) at national level?*
 - 4) *What are the EUAA tools Member States consider most useful? How exactly are they used in your decision-making processes? What steps can Member States and the EUAA undertake to ensure that these tools are designed so as to be fit for purpose?*
 - 5) *Considering that country guidance is a crucial tool for convergence, could a focus on low recognition rates, in conjunction with a continued focus on higher recognition rates, be useful in the light of the border procedure provided by the Pact?*
