



Council of the
European Union

Brussels, 9 April 2018
(OR. en)

7674/18

**Interinstitutional File:
2016/0133 (COD)**

LIMITE

**ASILE 12
CODEC 471**

NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

- New Dublin: Reversing the Dynamics

I. State of play of the negotiations

The European Council has several times called for progress based on the principles of solidarity and fair sharing of responsibility, highlighting the need for a comprehensive migration policy which will be resilient to future crises. In the Conclusions of December 2017, leaders requested searching for a consensus till the end of June 2018. Coming to an agreement within this period is also crucial as regards the negotiations with the EP, so as to finalise the CEAS reform within the mandate of the current Parliament.

II. Main elements of the new crisis mechanism

Based on the experience gained and lessons learnt from the 2015 crisis and the outcomes of the discussions at political level on the main principles of the Dublin reform, the Bulgarian Presidency has suggested including a new chapter providing for a comprehensive European response to disproportionate migratory pressure.

The situation, in facts and numbers, observed between 2010 and 2017 clearly shows the need for a structured mechanism at EU level to ensure that any potential challenge to EU asylum and migration systems is addressed in a systematic and timely manner.

Graphic 1 in Annex 1 shows that the number of asylum applications started to increase at EU level in 2011 – when the conflicts in Syria and Libya¹ began - before reaching their peak in 2015. The lack of pre-agreed criteria and measures resulted in a flurry of ad-hoc measures to respond to a deteriorating situation. This delayed the adoption of the necessary measures until 2015-2016, when it had become absolutely indisputable that the situation was so severe that it required a strong EU response. On a positive note, it can be also pointed out that when the respective measures were eventually triggered, Member States and EU institutions and agencies acted together, allowing for reinforced external border protection, a steady reduction in the numbers of irregular arrivals and lives lost at sea, replacing disorderly movements with legal and safe pathways for people in genuine need of international protection and helping Member State most affected addressing the pressure. While it is difficult to estimate the impact of the individual measures that were launched during this period, it is the combination of all these measures that actually led to a gradual and constant decrease in pressure and better management of the asylum and migration flows, including reducing the number of irregular arrivals sustainably over time.

¹ Both conflicts are still ongoing.

The main deficiencies can be outlined as follows:

- Lack of reliable information and structured analysis of the situational picture, including trends and causes of the dynamics of the numbers;
- Lack of instruments and procedures to define the pressure;
- Lack of mechanisms setting responsibilities at the different levels and the overall decision-making process;
- Lack of clarity about how and when to trigger the different instruments;
- No overall mechanism for managing the crisis response;
- No adequate mechanisms to provide/ensure any type of EU solidarity where unforeseen events arise or where the burden on a single Member State is disproportionate.

The main positive outcomes can be summarised as follows:

- A wide variety of actions were triggered, dedicated both to the external and internal dimension of the challenges;
- The EU demonstrated that it could respond to a crisis situation in full cooperation with Member States.

By introducing the new chapter, VIA 'Measures and additional criteria in response to challenging circumstances and severe crisis', the Presidency aims to establish the foundations for a fully-fledged crisis mechanism for managing the EU's migration and asylum system when put under pressure, notably by providing a set of measures that could be applied during the different stages of a potential crisis. The measures should be designed so as to enable a tailor-made response to different pre-crisis and crisis situations: different levels of pressure, different migratory flows, different situations in countries of origin and transit, etc.

Graphics 2 and 3 in Annex 1 show the main elements of this proposal, which aims to provide a timely and coordinated response at EU level while ensuring coherent action from all relevant stakeholders depending on the severity of the situation.

The new proposal provides clear criteria defining the levels of pressure and lays down measures aimed at establishing a proportionate response in each phase allowing for timely mitigation, based on common actions, of the challenges faced and addressing the root causes of the pressure at the very beginning, thus preventing escalation of the situation.

In order to provide for structured and coordinated responses at every level, the new proposal sets out a clear chain of actions responsibilities and procedures for triggering the different measures.

The Presidency proposal distinguishes three phases: normal circumstances, challenging circumstances and severe crises. The second stage, challenging situations, has moreover been divided into two sub-stages.

The first sub-stage (marked in yellow in graphic 2) within the challenging circumstances stage starts the moment a Member State goes above its fair share. In order to provide immediate support and a swift, preventive response to the challenges the Member State faces, this phase will be triggered by the mere fact that the Member State has exceeded its fair share. No intermediate procedural steps or decisions are required in order to trigger the EU support measures provided for. From day one of the challenging circumstances, the Member State will receive financial support and be given priority for all the expert and technical equipment it requests in the area of asylum, border protection and return.

In order to ensure reliable and timely assessment of the situation to provide for better coordination and support the needs of this Member State, the Commission will be obliged to carry out an analysis of the nature, composition and trends of flows. In parallel to this, the Commission will provide a comprehensive analysis of – and, where needed, a recommendation on – how to tackle the external dimension in order to limit flows.

The main responsibilities during this phase lie with the Commission. Apart from the measures that are triggered automatically (financial, expert, technical and operational support), the Commission may, in two weeks' time, propose additional measures as regards return, migrant smuggling, cooperation with third countries of origin and transit, allocation, resettlement, etc. Member States, EU agencies and other relevant stakeholders will then have to implement all the measures required to prevent an escalation of the crisis.

Providing a strong and coordinated answer to mounting migratory pressure when it begins will ensure more possibilities to keep the situation under control.

The first sub-phase provides a new set of responsibilities enabling the EU institutions and agencies to act in a coordinated and tailor-made manner in order to address the challenges faced by a Member State under pressure. It also provides a possibility for the Member States which are not affected by the challenging circumstances to support the Member State which is. During this sub-phase, the EU institutions and agencies, as well as all the Member States, should make every effort to restore normal circumstances. The aim of this sub-phase is to allow efforts to be intensified by all Member States at an early stage of migratory pressure in order to provide stronger support to the affected Member State. In order to achieve this active participation, the mechanism provides for incentives for those Member States which decide to participate.

The second sub-phase of the challenging circumstances (marked in orange in graphic 2) introduces additional safeguards for a tailor-made Union response. The main responsibility within this phase is assigned to the Council. This second sub-phase will only be applicable if a Member State reaches 160 % of its fair share. While the first sub-phase primarily targets measures outside the EU, in this phase efforts should be focused predominantly on alleviating the pressure on the Member State in challenging circumstances in order to avoid the collapse of its asylum and migration system. In addition, the Council is authorised to revise and upgrade the measures triggered during the first sub-phase and to trigger additional measures if necessary.

The third phase of the mechanism (marked in red in graphic 2) defines the broad parameters that will come into play in the event of a severe crisis. The main responsibilities in this phase lie at the European Council level. Any measures adopted when this level of pressure is reached should be based on political direction from the leaders. As well as the European Council being able to upgrade or prolong some or all of the measures triggered during the previous phases, leaders may also decide upon extraordinary measures, depending on the scope and specific characteristics of the crisis at hand. All measures decided upon by the leaders will be operationalised by the Council and implemented by the Commission and Member States, in line with the directions and guidelines given by the leaders.

III. Way forward

In order to reach an agreement by the end of June, the Presidency has revised the calendar at the expert and political levels, allowing for targeted discussions at both levels:

11-13/04 – FoP SCIFA chapters 1-6

19/04 – Coreper – policy debate on the open/political issues under chapters 1-6

25-27/04 – FoP SCIFA - chapters 6A-9

2/05 – Coreper – policy debate on the open/political issues under chapters 6A-9

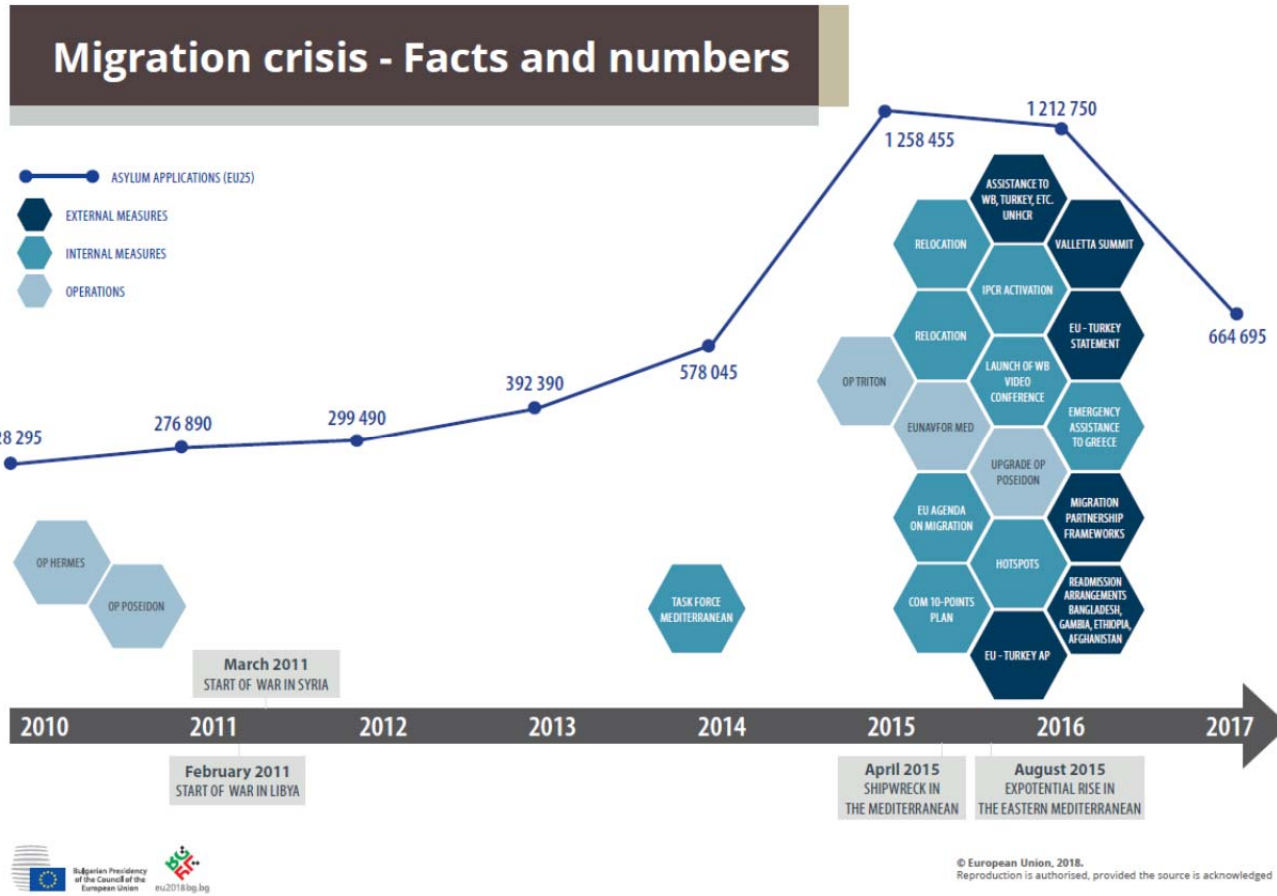
7-8/05 – FoP SCIFA - revised text of chapters 1-9

15/05 – Coreper – policy debate on the final open issues covering the whole text

23-24/05 – poss. Coreper

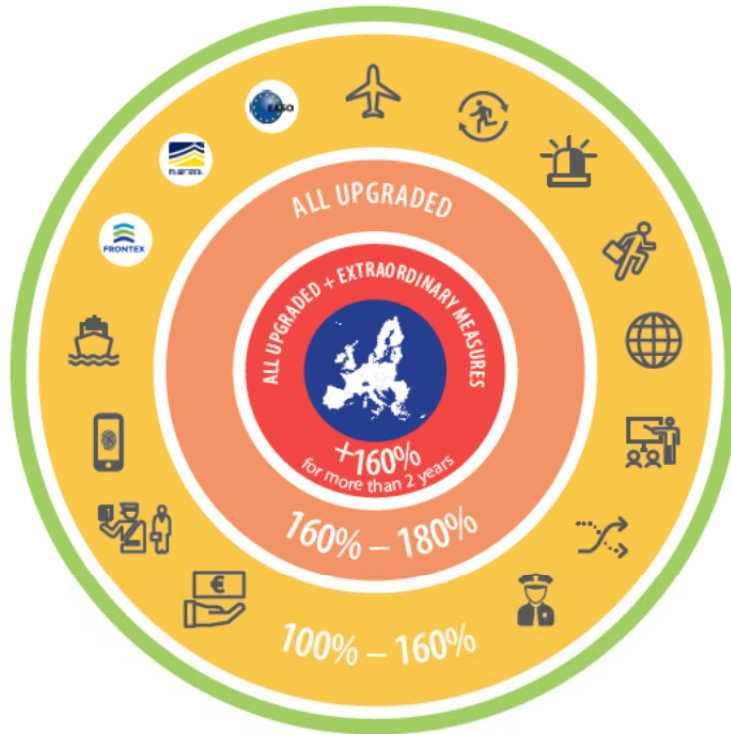
29/06 – reaching agreement at European Council

Against this background, delegations are invited to intensify work on the Dublin Regulation to come up with solutions that could further strengthen the new Dublin Regulation and allow a fully-fledged migration and asylum response mechanism to be developed. Reaching a consensus in June will mean making compromises at every level led by a common objective: securing our external borders and delivering a future-proof EU asylum system.



New Dublin

PROTECTING EUROPE - REVERSING THE DYNAMICS



	EU REACTION IN CHALLENGING CIRCUMSTANCES		EU REACTION IN SEVERE CRISIS
LEAD	COM	COUNCIL	EUCO
TRIGGER	Automatically Immediate, targeted (simultaneously or individually)	Council decision	EUCO guidance
RESPONSE	<ul style="list-style-type: none"> Financial support Expert support Technical support Operational support Returns Resettlement Emergency evacuation schemes Deployment of EMLOs Activating EU DEL Capacity building and training in 3rd countries Allocation Migrant smuggling Other measures 	ALL UPGRADED	ALL UPGRADED + Extraordinary measures
ACTION	COM, EEAS, Agencies MS concerned different MS depending on willingness, possibilities and real needs	COM, EEAS, Agencies MS concerned all MS on all measures	According to guidance from EUCO

New Dublin

PROTECTING EUROPE - REVERSING THE DYNAMICS

