FOOD FOR THOUGHT (**13 November 2019)**

Outline for reorienting the Common European Asylum System

Our common approach to both initial migration and secondary movement requires fundamental improvement. There are clear imbalances in the current CEAS. For example, in 2018, 75% of all applications for international protection were lodged in only five member states. In relative terms (that is, the number of people seeking protection as a proportion of the native population), some member states are bearing a burden more than 300 times greater than others.

Dublin has failed: the principle that the country of first entry should be responsible for examining the application for international protection, a system against secondary movement which is ineffective in practice, and the lack of solidarity elements only exacerbate these imbalances. Also, Dublin is inefficient: It involves immense administrative burdens and slows the processing of applications considerably. But in the entire EU, applicants are transferred to the member state (originally) responsible in only 3% of cases, thus allowing for a free choice of the member state responsible by the applicant. Not only do these developments run counter to the orderly management of migration, they also result in pull effects.

The EU needs a reform of the CEAS which

- reorganizes responsibilities and solidarity,
- meets humanitarian standards,
- does not overburden individual member states or lead to intolerable overcrowding in detention camps,
- ends wrong incentives among the member states and for asylum seekers, and
- functions in practice.

To create and enforce such a system, CEAS needs to be reformed. Legislative acts beyond those of the CEAS should also be amended as necessary.

As part of a comprehensive approach, the political and possibly legal connections to Schengen must also be examined. We must continue our efforts in the areas of external border protection and returns and work together to intensify them wherever it makes sense to do so. The same is true of voluntary returns. Following the recently agreed personnel increase, the role of Frontex should now be strengthened in operational terms through clever use of the applicable legal framework and by further reforms in future.

In line with the conclusions of the European Council of 28 June 2018, we should try harder to tackle the root causes of migration and, together with our North African partners, put an end to the deaths in the Mediterranean Sea. All of these measures, including a systematic improvement of operational cooperation among the member states, must go hand-in-hand with creating a new CEAS which can serve as a kind of toolbox to bring about a successful migration and asylum policy.

In reforming the CEAS, three key elements are inseparably linked: the initial assessment of asylum applications at the external border (I), a new regime for determining which member state is responsible for examining an application that distributes the burden fairly among all the member states (II), and joint enforcement of this regime, with effective measures to stop secondary movements (III).

I. Mandatory initial assessment of asylum applications at the external border

The protection of the external border is essential to the CEAS and affects all the member states. For this reason, the new CEAS must not only require that all applicants are registered in Eurodac, but also provide for a mandatory initial assessment of asylum applications at the external border. Manifestly unfounded or inadmissible applications shall be denied immediately at the external border, and the applicant must not be allowed to enter the EU.

We need to openly discuss the exact form and the scope of the initial assessment. In this regard we should consider particularly if entry should be denied to persons travelling from safe third countries and those persons who provide contradictory or false information. We might also consider varying the intensity of the initial assessment, for example examining applications of persons from countries with low rates of acceptance more intensively.

Security concerns should be taken into account already at the external border as well.

The EU agencies, namely the future European Union Agency for Asylum (EUAA), must help the frontline member states. The EUAA needs the authority to register applicants in Eurodac and to conduct initial assessments on their own, in order to gradually take over both tasks.

Initial assessments must be completed within a few weeks. Appropriate measures, if necessary including measures restricting freedom of movement, must ensure that those who wish to enter the EU undergo such assessments. Denial of the asylum application and the subsequent refusal of entry constitute a single decision subject to one-time legal remedy.

Refusal of entry often means return. Frontex must help here. The burden of returns resulting from the initial assessments could also be taken into account in the fair distribution of responsibility among the member states (for example by deducting the number of persons to be returned from the fair share; see below).

II. A fair system for determining responsibility

Applicants would be allowed to enter the EU only after passing the initial assessment. Before they enter the EU, the EUAA would determine which member state is responsible for examining the asylum application and for making the final decision as to whether the applicant is entitled to protection.

The most important principle of the new responsibility regime must be that the burdens associated with examining applications are distributed fairly among all the member states.

This can be achieved by determining the “fair share” based on population size and economic strength (GDP) of the member states. Such a system would make it possible to determine the member state responsible in a specific case simply and quickly, for example using a randomizer. Responsibility would no longer be based on the principles of the member state of first entry and the member state of application.

The fair share would set the overall number of asylum seekers to be admitted by a member state; within that number, certain circumstances of the individual case could be considered as far as practical, for example family relations and visas, or factors which could be relevant in case of return, such as member states’ return partnerships with third countries.

At the external border, the EUAA would then enter in Eurodac only the one member state responsible. Eurodac would then serve as the single proof of responsibility. To relieve the member states on the external border, legal remedy could be granted in the member state determined to be responsible (with a concentrating effect, see below).

III. Joint enforcement of the regime for determining responsibility

The fair distribution of responsibility would make stopping secondary movements a shared interest of all member states for the first time. Like the mandatory initial assessment at the external border, stopping secondary movement is an essential condition for reorienting the regime for determining responsibility as outlined in this paper.

The member state determined by the EUAA to be responsible must remain responsible permanently. It is unacceptable that, within the EU, the responsibility for examining an asylum application should have to be reviewed multiple times or that the responsibility should shift simply due to the passage of time (for example, if an applicant is not transferred to the responsible state within the time limit). This creates all kinds of wrong incentives. The principle of "once responsible, always responsible" must apply, with very few exceptions, for example following a successful return.

Applications should no longer be examined in more than one member state at the same time. Applications (including second and subsequent applications) made in a member state which is not responsible must be rejected with a minimum of bureaucracy as manifestly unfounded. Because such rejection would only repeat the determination of the member state responsible by the EUAA, no further legal remedy would be required (concentrating effect).

Accommodation and social benefits would be provided only in the member state responsible. Social benefits should be funded EU-wide as far as possible, but paid according to an index which would ensure that benefits are at an equivalent level across the EU, independent of the member state.

Transfers to the member state responsible must be fast and simple using a notification procedure. This would be possible, as the member state responsible could be found and proven easily by consulting Eurodac (see above). No additional legal remedy would be needed here either (concentrating effect). If an applicant is not entitled to protection, the member state not responsible should also be able to return the applicant to the country of origin (reciprocal recognition of decisions to deny international protection).

Persons apprehended who have not undergone an initial assessment at the external border and have therefore not been registered in Eurodac must not enjoy any advantage over those who have. Such persons must therefore immediately undergo on the spot an accelerated procedure having the same scope as an initial assessment. Depending on the result, either they should be refused entry or removed, as at the external border, or the member state responsible for examining the application should be determined. As a penalty for unlawful stays, the member state in which a person is apprehended should not be determined as the member state responsible for examining the application.