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WHICH WAY FORWARD FOR EU MIGRATION AND ASYLUM POLICY?

1. Introduction

During the 2014-19 legislative cycle, migration has been prominently on the EU agenda and is likely to stay there for the foreseeable future, as the challenges linked to global migratory patterns are not likely to diminish. The numbers of irregular border crossings into the EU have decreased to match pre-crisis levels, and we should carefully analyse all factors behind this positive development and build our future action on evidence-based policies. However, many of the reforms necessary to make our immigration system future-proof and crisis-resilient are still underway, and secondary movements inside the Schengen area persist. As a concrete consequence, some Member States still apply temporary controls at the internal borders, which also affects the freedom of movement of EU citizens. We need to find common ground and advance in our crucial tasks if we are to find a way back to a functioning Schengen system - or a way forward towards an improved version of it. The pivotal moment at the turn of the institutional cycle is perfectly suited for a broad, forward-looking discussion on where our priorities should lie during the coming years.

The Romanian Presidency launched this discussion in May (SCIFA/HLWG) and June (JHA Council) by taking stock of the progress made and the challenges which still lie ahead. In Member States' interventions, it became clear that we fully agree on the need for a comprehensive approach to migration. Equally, there is a shared view of the importance of strong external borders, effective returns, dismantling smuggling crime networks, building further bridges between our internal and external action and focusing increasingly on addressing root causes of irregular migration and preventive measures along the migratory routes, in cooperation with our main partners. The purpose is to provide protection to those who need it, while minimising irregular arrivals in the EU and reducing the number of unfounded asylum claims. Member States shared the view that we must prepare for future crises, but there were also concerns about labelling migration primarily as a threat. The narrative we use is of key importance and it affects the integration prospects of all third-country nationals legally residing in Member States. Our overall aim must be to ensure the proper functioning of the Schengen area and safeguard the values that European integration is built on. Our system must fully respect international law, including the right to seek asylum.

Whatever course of action we choose, certain universal considerations seem to stand. We need to develop our situational awareness with better data analysis,

including scenario-based projections and foresight research, so that we can move from a reactive to a proactive approach and base our policies on reliable data. In this context, we need to establish a forum at EU level where migration data and issues pertaining to migratory flows can be discussed with a view to building a stronger evidence base for our policymaking. We need to acknowledge the different situations in which Member States currently find themselves: some are at the frontline facing irregular migration, some are the primary destinations of secondary movements, whereas some scarcely receive any migrants seeking international protection. It is also important to analyse what actions can be taken to improve the implementation of the acquis we already have in place. Finally, we must ensure that the potential of our Agencies is fully exploited in line with their respective mandates in both the internal and external dimensions.

When it comes to shaping our way forward, there is some guidance to draw from the discussions chaired by the Romanian Presidency. Firstly, the interaction between the proper functioning of the Schengen area and our ability to make the necessary improvements in our asylum and return systems will need to be carefully assessed. Secondly, we need to strike a proper balance between focusing on external aspects and reforming the internal rules and structures. Even as we prioritise preventive measures, we still have to be prepared to handle the cases of those arriving, in a fair and efficient manner in line with international legal obligations, fully respecting human rights, while at the same time tackling secondary movements. New impetus should be given to finding a compromise needed to conclude the reform of the Common European Asylum System (CEAS). In the field of return, alongside investing in readmission cooperation, we need to complete the revision of the Return Directive and otherwise boost the use of the existing tools. Thirdly, we need to develop the way the EU helps provide opportunities for migrants and protection to vulnerable persons around the world, including through resettlement and other legal pathways.

The next step is to determine how the Council bodies should focus their efforts during the period where the institutional setup is taking shape after the European elections. The objective of this document is to launch and steer the discussions during the Finnish Presidency in a way that enables us to sharpen our message going towards 2020.

2. Comprehensive action along the migratory routes

a) How to better coordinate all external activities linked to migration?

If we wish to minimise irregular arrivals in the EU in a sustained way, our priority must be to prevent irregular migration upstream in the spirit of partnership with third countries and a whole-of-route approach. We must continue our efforts in order to improve results in breaking the business model of human smugglers and traffickers. In order to be effective, we must ensure coherent messaging and carefully coordinate all our external activities placing migration at the core of our efforts, be they led by the Commission, the EEAS (including CFSP missions), EU Agencies or individual Member States. The new EBCG Regulation provides the EBCG

Agency (also known as Frontex) with the reinforced mandate to engage in operations in third countries which are either countries of origin or transit of migration affecting the EU, in the interest of implementing European integrated border management. Based on enhanced situational awareness, analysis and scenario building, we need to plan our action comprehensively, taking into account development on each relevant migratory route, the characteristics of each country or region of origin and transit including the local efforts to manage migration, as well as the specific EU leverage vis-à-vis those regions/countries. We should always aim for mutually beneficial partnerships to ensure consistency and shared ownership of the endeavours with the third countries.

b) The need to ensure sufficient financial resources

The preparations for the 2021-27 multiannual financial framework are ongoing and the moment is right to make sure that the EU has sufficient resources which may be easily mobilised to both react to acute situations (without having to resort to ad hoc funding) and fruitfully engage in pre-emptive long-term activity. The broad objectives related to migration should be present in all relevant areas such as trade and development policy. Regarding the latter, this is already reflected in the plans to have a certain percentage of the new Neighbourhood, Development and International Cooperation Instrument earmarked for addressing the root causes for migration and for supporting migration management. We also need to ensure proper coordination of investments under the different financial instruments. Moreover, an integral part of making an impact on root causes is fighting disinformation and enhancing the possibilities of potential migrants and asylum seekers to have proper access to accurate information.

c) Resettlement and humanitarian admission as legal pathways to international protection in the EU

Resettlement and humanitarian admission are a sustainable, safe and organised way to offer international protection to the most vulnerable refugees. The need for protection is determined closer to the countries of origin, thereby undermining the business model of migrant smugglers and reducing incentives for long, dangerous journeys towards Europe or similar destinations. Furthermore, resettlement is a way for EU Member States to share the burden with third-country partners hosting large numbers of refugees concretely, thereby contributing to mutually beneficial partnerships. However, for these goals to be attainable, we need to step up our action at EU level in this regard. While the EU Resettlement Framework Regulation has not been yet adopted, the next EU resettlement scheme should provide us with the opportunity to coordinate and prioritise our resettlement efforts, highlighting strategic elements and making full use of EU funding. The goal could be to make resettlement the central avenue for offering international protection in the EU by significantly scaling up our efforts in this area, as part of the comprehensive approach on migration.

Actions planned during the Finnish Presidency:

- Working towards a whole-of-route approach, discussing the developments and strategies route by route (SCIFA, HLWG)
- Enhancing dialogue with third countries on migration with a specific focus on EU-Africa relations (HLWG)
- Raising awareness on migration foresight methodologies and discussing how to better use evidence and findings in policymaking (HLWG)
- Promoting the implementation of the EU resettlement scheme and boosting strategic resettlement in Member States (SCIFA)
- Supporting the implementation of the ILO Regulation after its entry into force to ensure reinforced information sharing and cooperation (IMEX Working Party)

3. Making returns work

A well-functioning and credible migration and asylum policy requires swift return of those with no right to stay, while respecting human rights and the principle of non-refoulement. The return rate in the EU remains low, which undermines the overall legitimacy of our immigration system. It is clear that a combination of concrete internal and external measures is needed if we are to overcome this challenge. There are substantial efforts necessary to improve the quality and efficiency of return systems within Member States, relating for instance to the links between the return and asylum systems and the speed and efficiency of procedures. As the lack of cooperation on readmission from third countries is a major factor leading to low return rates, we need to find new ways to establish stable partnerships with third countries of origin and transit so that readmission cooperation can be enhanced in a sustainable way.

The European Council has clearly stated that policy areas such as visa, trade and development should be fully utilised for this purpose, but the only domain with tangible progress to date is visa policy. We must ensure that visa leverage can be effectively used under the rules set out in the revised Visa Code. At the same time, the visa suspension mechanism is an important tool to combat the proven misuse of visa liberalisation, in particular where an urgent response is needed to resolve the difficulties faced by Member States. The time is also ripe for launching cross-sectoral discussions on the use of trade policy as leverage. Promoting free trade is an important global objective for the EU and we should therefore frame the discussion in an open and multifaceted manner, avoiding any unnecessary controversy while remaining determined to move forward fruitfully.

With the amended EBCG Regulation, Frontex will soon have a strengthened mandate and resources to support Member States in their return-related efforts, regarding both internal and external aspects as well as in pre- and post-return activities. The more resources are invested in the Agency, the more crucial it is that its activities optimally respond to the needs identified on the ground. The proper

implementation of the new mandate is one of our key tasks for the coming years so that the Agency and Member States share the same objectives, situational awareness and priorities, and may engage in effective and efficient cooperation with a view to an enhanced implementation of the EU return policy.

Summarising the above, there are many tools already on the table to enable more effective cooperation on readmission: some of them are well established, some are only entering into force and some need further work to take shape. It is important that Member States optimally utilise the tools and possibilities already available. We also have the negotiations on the proposal for a recast of the Return Directive ahead of us, once the European Parliament adopts its report. It is an essential task for the coming years to ensure that our tools work together optimally, avoiding any overlaps or inconsistencies.

At the turn of the institutional cycle it is also appropriate to consider whether there is willingness, in the medium to long term, to move beyond the tools already in place or in the pipeline. One such construction could be an "EU Coordination Mechanism for Returns" which would allow Member States encountering problems with a certain third country on readmission to notify their concerns to the European Commission, which, possibly with the help of the EEAS, could consider using different leverages available at EU level. Under the newly amended Visa Code, the Commission already has an obligation to assess regularly the relevant third countries' cooperation with regard to readmission, taking into account several objective indicators, the list of which is quite extensive. The same or a similar assessment could be used as a basis for the Commission and the EEAS to reach out to the third country in question to encourage them to improve the cooperation.

The possibility of forced return is essential, but voluntary return is the primary option and should be encouraged with every means available, such as different forms of assistance including support for reintegration. As things stand, Member States have very different approaches on supporting reintegration and there would be great benefit in intensifying our cooperation. Support to the returnee should be provided in a way that promotes sustainable return and encourages potential migrants to seek livelihoods in their home region instead of resorting to irregular migration towards Europe. Reintegration support also has a broader aspect of building the capacities of the receiving communities and it should be seen as an integral part of our third-country strategies.

Actions planned during the Finnish Presidency:

- Raising awareness of the different aspects of the extended mandate of Frontex and mapping the most urgent needs of Member States in this respect (SCIFA, IMEX Working Party)
- Taking stock of the existing and potential value of different policy tools in fostering better cooperation on migration, including launching concrete cross-sectorial discussions on the use of trade policy (SCIFA, HLWG)

- Supporting the effective implementation of the leverage set up in the Visa Code (SCIFA/HLWG, IMEX Working Party)
- Potentially, exploring the concept of an “EU Coordination Mechanism for Returns” to support readmission cooperation (SCIFA, IMEX Working Party)
- Finding ways to enhance EU cooperation in the field of reintegration of returnees, for instance as regards the means of supporting reintegration, monitoring of programmes, return counselling, or the link to development policy (SCIFA/HLWG, IMEX Working Party)
- Discussing the use of the visa suspension mechanism (Visa Working Party)

4. The next steps in the asylum reform

The co-legislators have not spared efforts during the legislative cycle 2014-19 in order to complete the vital reform of the CEAS. Although none of the seven proposals has been adopted, it is also true that there is broad agreement on many elements of the reform. Even though the most acute crisis may seem to be behind us, the underlying problems that prompted the Commission to launch this reform in the first place are still largely present. The volatile situation in some areas in the EU's neighbourhood as well as the persistence of secondary movements and the repercussions experienced within the Schengen area are strong indicators that the reform is urgently needed. We need a system that responds to our current and future needs ensuring the efficient processing of applications as well as the legal protection of asylum seekers. It is vital to build trust among Member States and form the basis on which we should move forward and find a compromise in a spirit of fair responsibility-sharing, meaning that every Member State complies with agreed legislation and practice, and no one is left alone to deal with migratory pressure.

As the migration crisis emerged in 2015, the need became clear to improve the asylum system through a broad package of proposals. Based on the experience of the past three years, it seems that we may need to approach the goal from a new angle. The turn of the legislative cycle is a good moment to take stock of where we stand with key elements included in the existing legislative proposals. We need thematic discussions focusing on issues that are central for building a future-proof asylum system.

It has proven difficult to overcome the differences of opinion by looking at only one proposal at a time. Therefore, an appropriate way forward would be to list the most critical open questions and have them discussed together, fully acknowledging that a spirit of compromise and awareness of the big picture will be needed for a successful outcome. As a starting point, the list of issues to be addressed could contain the following elements: (1) responsibility, (2) solidarity, (3) use of the border procedure, (4) monitoring by the EU Asylum Agency, (5) safe countries and (6) the inclusion of beneficiaries of international protection in the Dublin Regulation.

In parallel to this discussion, the main operational objective is to address the situation in the Mediterranean in a way that prevents further fatalities, and which enables frontline Member States to respond to emergencies in an effective way. The advancement and implementation of the temporary arrangements as outlined by the Romanian Presidency will be followed up at the operational level while at the same time seeking ways to move forward with the Dublin reform.

Actions planned during the Finnish Presidency:

- Seeking to enhance understanding of the variations in national asylum systems underlying the different approaches on issues such as the border procedure (Asylum Working Party)
- Agreeing on a list of open questions within the CEAS package on which we need to build consensus, and on this basis engaging in a discussion (SCIFA, to be followed by technical and political discussions as appropriate)
- Following up the implementation of the temporary arrangements in relation to SAR operations in the Mediterranean at the operational level

Questions

In light of the above, delegations are kindly invited to express their views on the following questions:

1. Which are your priorities regarding the development and use of various incentives to foster readmission cooperation?
2. How do you see the interaction between the proper functioning of the Schengen area and our ability to make the necessary improvements in our asylum and return systems?