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NOTE

From: Presidency
To: Strategic Committee on Immigration, Frontiers and Asylum
Subject: Pact on Migration and Asylum
- Progress Report

Since 23 September 2020, Member States have been debating some of the proposals included in the **New Pact on Migration and Asylum (Pact)**. The aim is to develop a more efficient management of asylum and migration in the EU.

Since January 2021, the Portuguese Presidency of the Council of the European Union (Portuguese Presidency) has chaired the discussions on the Pact, both at technical and political levels. It has promoted a flexible, comprehensive and realistic approach, being fully aware of the need to reach the broadest possible agreement among the Member States on the issue.

During those discussions, the following issues have been identified as those that need to be addressed and prioritised.

1. External dimension

The external dimension of the Pact is one of the key aspects to achieve a comprehensive EU approach on migration and asylum management.

The JUMBO meeting confirmed the strong consensus for the rapid operationalisation of comprehensive, tailor made and mutually beneficial partnerships with key partner countries and for better coordination between Member States and EU-level efforts. This is in line with the following principles:

- a) The need to consider North Africa, the Sahel region and Sub-Saharan Africa, the Western Balkans and the Silk route as priority regions. Within these regions, the EU must identify priority countries with which to establish partnerships. Following the High Level Working Group (HLWG) discussion of April 22 on the follow-up to the JUMBO Meeting, the Portuguese Presidency will be submitting a document at the HLWG on May 28. The document will set out and establish a proposed way forward and a shortlist of priority countries on the basis of the positions expressed by Member States at previous meetings and taking into consideration geographical balance; the relevance of migration flows towards Europe; the potential for expanding existing cooperation on all relevant aspects of migration policy; as well as current challenges, including returns and readmissions. The document is meant to provide the Commission with a basis on which to prepare the implementation of a roadmap on mutually beneficial partnerships with third countries of origin and transit;
- b) development of EU actions targeted at young people;
- c) the use of both positive and negative leverage measures in partnerships;
- d) the indispensable role of EU agencies in managing migration;
- e) the need to fully implement the EU-Turkey Statement;

- f) in the development of external action, the need to make full use of the Neighbourhood, Development and International Cooperation Instrument (NDICI) in relation to migration management and governance-related actions in a targeted way to maximise the impact on the external dimension of migration, especially in the prevention of irregular migration.
- g) the positive contribution made by Team Europe Initiatives on migration, such as the one proposed by Spain.

At the JUMBO meeting, the Presidency identified the need to lay the foundations for an innovative political dialogue in the area of JHA with North African countries, particularly those in the Mediterranean basin, focused on the cooperation on topics such as:

- migration;
- mobility and border management;
- security, serious and organised crime;
- data protection;
- cybersecurity and cybercrime;
- police and judicial cooperation;
- democracy;
- the rule of law;
- fundamental rights.

In the debate held at the JHA Councils and JUMBO meeting, the majority of the Member States agreed on the importance of establishing a balanced approach to develop and further enhance cooperation with countries of origin and transit, taking into consideration all relevant aspects of migration policy. Member States also agreed on the need to mobilise the relevant policies and tools at the EU's disposal to support comprehensive, balanced and mutually beneficial partnerships, including development cooperation, visa, trade and investments, employment and education.

The Portuguese Presidency identified the need to strengthen partnerships between the EU and the countries of origin and transit; identify and address the root causes of irregular migration; acknowledge the importance of supporting those countries in dealing with migratory flows and promote legal migration channels and the integration of migrants. Partnerships with relevant third countries are considered to play a fundamental role.

For this purpose, the Ministerial Conference on the Management of Migratory Flows, held on May 10-11, also focused on promoting discussion, with relevant African countries, on the policies and instruments related to the management of irregular migration flows. This would include the establishment of return and readmission tools and the promotion of legal pathways for migration to the EU. This would be done in a holistic approach with a view to combating the root causes of irregular migration. At the same time, efforts would be done to support countries of origin and transit, develop legal pathways for migration and tackle human trafficking and migrant smuggling.

A High Level Technical Seminar took place on May 10 in order to prepare this Ministerial Conference. The seminar involved the participation of expert representatives from Member States and African countries, the Commission, the EEAS, Frontex, EASO, the African Union, the IOM and the ICMPD to discuss key issues related to the management of migratory flows.

In addition, the Portuguese Presidency, within the HLWG meetings, covered topics such as:

- Implementing the Pact – strengthening migration partnerships with selected priority countries in North Africa: Tunisia (February 2021) and Morocco (April 2021); these discussions continued the ones held under the German Presidency: Turkey (October 2020), Pakistan and Nigeria (November 2020);
- The way forward on the strengthening of comprehensive migration partnerships with countries of origin and transit;

In the next HLWG meeting (May 28) it is expected to have a debate on the way forward on the report under Article 25a of the Visa Code, and a further debate on strengthening migration partnerships with Afghanistan.

There was a broad consensus expressed by the HLWG delegations as regards the way forward on strengthening comprehensive migration partnerships with countries of origin and transit. Member States agreed on the overall way forward proposed by the Presidency and further work is underway for the rapid operationalisation of the partnerships.

The Presidency invited delegations to share information on the main aspects of their bilateral cooperation in migration and mobility areas, in relation to the issue of strengthening migration partnerships with selected priority countries. This came in addition to the constructive HLWG debates on Tunisia and Morocco (and, as expected, Afghanistan in the next HLWG). These contributions will serve as an important element for the further implementation of the partnerships.

2. Internal Dimension

2.1. Asylum

One of the critical challenges, if not the most critical challenge, that the EU faces in terms of its asylum and migration management system is addressing imbalances in migratory pressure across the EU.

The Portuguese Presidency aimed to further improve understanding among Member States of the new proposals and to generate the widest possible support on solutions towards a proper balance between solidarity and responsibility.

Two main legislative proposals, which are inextricably linked, drawing on the lessons learnt from discussions on the 2016 CEAS package aim to implement this balance between responsibility and solidarity in a new format: the **Asylum and Migration Management Regulation** (AMMR) and the **Asylum Procedure Regulation** (APR).

The discussions on these two proposals clarified the different positions of Member States in terms of: responsibility (mostly based on border procedures for asylum and return, but also on the “Dublin IV” rules, and aimed at developing efficient procedures and at avoiding secondary movements within the EU) complemented with solidarity (based on the proposed solidarity system, including relocation, return sponsorship and other forms of solidarity). The aim is to alleviate the pressure on Member States of first entry.

The Portuguese Presidency progressed as much as possible at technical level in the discussions of both proposals at the Asylum Working Party. However, it was only possible at this stage to conclude the first reading of the AMMR and to start the second reading of the APR, based on a draft revised text proposal from the Presidency.

2.1.1. Proposal for the Asylum and Migration Management Regulation

This is a crucial instrument that will guide the management of migration and asylum policies in the EU Member States and reflect a balance between responsibility and solidarity that has the widest possible support of Member States.

The first reading and discussion of the AMMR was concluded within thirteen meetings of the Asylum Working Party (ending on April 15).

During the discussions in SCIFA and the Asylum Working Party, while large support was identified for many provisions, the Presidency has also identified a number of points where Member States expressed different or even contradictory views. These cannot be addressed at technical level and need a discussion at higher political level.

The major points identified during the first reading were the following:

Part I. – Scope and definitions

Comments made by Member States on these sections reflect their political positions on key issues (see below), such as the inclusion of siblings in the definition of "*family members*"; the inclusion of Search and Rescue as a separate solidarity mechanism; the scope of the AMMR (e.g. in relation to the definitions of "*absconding*" and "*risk of absconding*").

Part II. – Common framework for asylum and migration management

- This part was discussed in SCIFA and the Asylum Working party.
- At **SCIFA**, there was broad support for the establishment of the comprehensive leverage mechanism contained in Article 7 (cooperation with third countries to facilitate return and readmission) and the principle contained in Article 3 (a holistic and comprehensive approach to asylum and migration management in the EU). While major support was also expressed for the principle of solidarity and fair sharing of responsibility, major differences in positions emerged on Articles 5 and 6, and in particular on two main points:
 - 1) The more horizontal point of flexibility in the applicability of the solidarity principle and the proposed mechanisms (relocation and return sponsorship): Some Member States expressed their opposition to a specific mechanism for SAR disembarkations, while others welcomed this. Moreover, the solidarity measures proposed by the Commission still require discussion. These include the new proposal for return sponsorship, which has raised several questions of a political, legal and practical nature. There is a need to further clarify the modalities of the implementation of this new instrument.

- 2) The need to further refine the modalities for the monitoring and assessment of Member States' capacities to effectively implement asylum and migration policies and ensure coordination with Community institutions and agencies, highlighting the importance of the integrated approach to policy making and better governance as well as monitoring of the national policies of each Member States.
- The SCIFA meeting also showed the need to further refine the basic principles of the proposed approach, its components and elements and/or relation between different legislative and other documents, such as reports, strategies and actions.
 - In addition, the Asylum Working Party considered that some of the principles, such as those set out in articles 4 and 5, could be either better defined or moved to recitals so as to reassure some Member States who expressed doubts about the legal consequences of the principles, namely whether they have a purely declaratory role, as explained by Commission.
 - On the other hand, many Member States consider that some of the features of the mechanism foreseen in this set of rules, namely that of Article 6, which ensure the implementation of the comprehensive approach provided in Article 3 for which there is strong support, should be refined. This could help avoid situations when the rules become too complex or represent an additional burden for national administrations while keeping in mind the monitoring needs as identified in SCIFA.

Part III. – Criteria and mechanisms for determining the Member State responsible (also designated as “Dublin IV” rules)

The implications of the balance between responsibility and solidarity remain a key theme in the discussions of this part, namely:

- In the question of the criteria for determining the responsible Member State. No consensus was reached on the inclusion of siblings in the definition of family members.
- Several Member States expressed the view that the determination of the responsible Member State must take place before relocation.
- For some Member States, the following issues are of utmost importance: addressing secondary movements; avoiding easy shifts of responsibility; granting material reception conditions only in the Member State responsible. On the other hand, frontline Member States cautioned against the risk of an excessive burden of such responsibilities on them.

Part IV. – Solidarity

Different points of view were expressed concerning the proposed solidarity mechanism, in particular:

- The flexibility of the **solidarity mechanism**. While flexibility is appreciated, Member States indicated the need for more predictability and transparency in all steps of the procedure (triggering, determination of needs and measures).

- The effective solidarity measures needed. Some Member States favour a flexible mechanism, consisting of a broader catalogue of solidarity measures (in particular more detail on ‘other measures’) and full flexibility in choosing the supportive measures, whereas other Member States defend a more strict catalogue, namely with mandatory relocation as the most effective measure.
- Whether there should be a specific mechanism for disembarkations as a result of SAR operations;
- The new concept of return sponsorship. Article 55 relating to Part IV of the AMMR, was discussed both at the Asylum and at the IMEX Expulsion Working Parties. While most of Member States support this new form of solidarity, several aspects related to its practical implementation need to be further clarified.

Based on the written comments received from delegations, the Portuguese Presidency, with the support of the Commission and Council, is taking stock of the different positions. The Slovenian Presidency will follow up on this.

2.1.2. Asylum Procedure Regulation - Amended Proposal

On April 21, the Portuguese Presidency presented in the Asylum Working Party draft compromise proposals focusing exclusively on the amended articles, included in the amended proposal for an Asylum Procedure Regulation accompanying the Pact (namely in relation to the new border procedures for asylum and return, but also the rules for the appeal procedure). The second reading of the text thus begun.

The drafting of the compromise proposals was based on the written contributions sent by the Member States following the first reading. The Portuguese Presidency also restructured the long text of former Articles 41 (Asylum border procedure) and 41a (Return border procedure) by subdividing it into several new articles. This adds clarity to the text and helps identify the different sub-topics.

Four meetings of the Asylum Working Party were scheduled to finalise the second reading. Although the new proposed structure of the articles was welcomed by a majority of delegations, the following main challenging elements still require discussion:

- the mandatory / voluntary nature of the asylum border procedure, as well as its scope and exceptions;
- the feasibility of linking both asylum and return border procedures and the (short) deadlines foreseen for it;
- implementing a legal concept of non-entry into the territory, and the (systematic) use of detention as well as possible alternatives to it;
- the links with other legislative proposals, namely the AMMR, Reception Conditions Directive or the Screening Regulation.

Based on the written comments received from delegations, the Portuguese Presidency, with the support of Commission and Council are taking stock of the different positions. The incoming Slovenian Presidency will follow up on this.

2.1.3. Solidarity Mechanism – Simulation exercise

At the March 23 SCIFA meeting, the Commission (with the collaboration of EASO and the Joint Research Centre) presented a simulation exercise, based on two fictional scenarios of migratory pressure in EU. This allowed Member States to better understand how the proposals contained in the Pact, namely the mandatory border procedure and the solidarity mechanism would work in practice and what their impact would be on benefitting and contributing Member States.

In that meeting, the Portuguese Presidency stressed the point that the exercise is a good starting point for the discussion on the subject and that this should continue at technical level. Accordingly, the Asylum Working Party held two further discussions on April 14 and May 6.

While Member States welcomed the simulations as a very useful tool, they requested further development and adaptation of the simulation, which would include other parameters in the simulations regarding the mandatory border procedure, further details on the various steps of the solidarity mechanism and the simulations, as well as reflection of secondary movements.

In view of the existing simulations and their possible variations, the effectiveness of the mechanism in providing solidarity and alleviating the burden on the Member States concerned could be further discussed.

2.1.4. EURODAC Regulation

The German Presidency concluded the second reading of the proposal, aiming to achieve a general approach and a mandate to start negotiations with the European Parliament. However, in spite of Member States' broad support to the targeted amendments included in the amended proposal, some Member States insist to consider all the legislative proposals to reform the European asylum and migration policy as a package.

In this light and taking also into account that the European Parliament is still discussing the amended proposal, the Portuguese Presidency did not consider that the aim could be met and decided not to pursue further discussions in the Council.

2.1.5. European Union Agency for Asylum Regulation

The German Presidency resumed negotiations (technical trilogues with the European Parliament) on the text negotiated in 2017 between the European Parliament and the Council. Amendments to the proposal focused on updating cross-references to other legislative instruments, and introducing provisions on the use of external experts by the Agency in asylum support teams.

Following bilateral contacts at political level, the Portuguese Presidency notes that the proposal is blocked owing to the "package approach". However, in view of the high relevance of the file, the Presidency is still seeking a way forward.

2.2. Migration

2.2.1. Blue Card Directive

On May 17, the Portuguese Presidency reached a provisional agreement with the European Parliament on the revision of the Directive on the admission and residence conditions of highly qualified workers (Blue Card). The provisional agreement was adopted by COREPER on May 21. It is expected to be approved by the LIBE Committee on June 3.

2.2.2. Talent partnerships

The Portuguese Presidency promoted the discussions on the concept of “*Talent partnerships*”. These can help mobilise EU and Member States and engage partner countries strategically with a view to strengthening legal migration channels. The aim is to support legal migration and mobility – for study, training and work.

2.2.3. Digital transformation

In the management of migration, the use of Artificial Intelligence (AI) and Digitalization are becoming increasingly relevant. This applies for example in terms of border management and migration and asylum procedures.

The closure of the EU's internal and external borders as a result of the COVID-19 pandemic has posed several challenges and highlighted the advantages of digitalised processes, while arguably accelerating the digital transition process already underway in some countries.

The Portuguese Presidency in collaboration with the European Migration Network (EMN), organised a virtual conference held on April 30, dedicated to “Digital Transformation in Migration”. Such work brings together European and national stakeholders in the migration field, to debate the risks and opportunities of the digitalisation of migration processes and technologies envisaged for the future. It was an opportunity to learn about innovative examples of how digital tools can support migration management, including the use of AI and a reflection on how to ensure proper digital safeguards and ethical standards are respected.

The debate on AI/Digital Transformation will also be held within COSI, and raise awareness information points on the topic will be held at both Frontiers WP and Asylum WP, before a debate at political level in the JHA Council on June 8.

3. External Borders

The Portuguese Presidency recognises the fundamental need of a modern, robust and integrated management of the EU’s external borders, in sync with a proper management of migratory flows. In this regard, the Presidency identified the following priorities:

3.1. Screening Regulation

A second reading of the Proposal of the Screening Regulation in the Frontiers Working Party and a fifth reading in JHA Counsellors have been concluded. Reserves remain on the content of the whole proposal given its link to the proposal for the Asylum Procedures Regulation and the new solidarity mechanism of the proposal for the Asylum and Migration Management Regulation.

The Portuguese Presidency considered the work at technical level to have reached its limits at the end of May, since it is clear that the remaining issues cannot be resolved at that level.

3.2. Return [and Readmission]

The recast of the Return Directive is central to this issue. In this regard, the European Parliament is expected to adopt a position allowing therefore starting inter-institutional negotiations. However, the timeframe at the European Parliament has not yet been determined.

Since the issue of return sponsorship plays an important role in the proposed new solidarity mechanism under the Pact, the Presidency decided to promote a discussion on topics such as the role of the EU Return Coordinator; the Frontex' mandate; the responsibility on subsequent asylum applications; the consequences of absconding and the timeframe for the return sponsorship procedure. The outcome of this discussion at the Integration, Migration and Expulsion Working Party (IMEX Expulsion) fed into the further debates on Article 55 of the proposed Asylum and Migration Management Regulation at the Asylum Working Party.

During the IMEX (Expulsion) Working Party meeting held on February 24, the Commission presented the first Assessment on third country cooperation on readmission (Article 25a Visa Code), and a general debate on this assessment was held. The delegations considered the assessment to be very useful and called to swiftly proceed with the next steps, by indicating to which third countries positive or negative measures should be applied, depending on their level of cooperation.

The assessment was further discussed at the JHA Council of March 12, and at the JUMBO meeting of March 15. At these meetings, the ministers also called for a swift follow-up to the Commission's assessment and mandated the Presidency to indicate a few most non-cooperative countries on readmission and, possibly, a few countries that are cooperating on readmission in an excellent manner.

The Presidency promoted the identification and exchange of good practices, which might allow for the progressive resumption of return procedures through a questionnaire on “*Return activities in the context of the Covid-19 pandemic*”. During the May 12 IMEX (Expulsion) Working Party meeting some of the most important recommendations, such as a digital transition and the use of new technologies; the implementation of alternatives to detention; the implementation of coordinated return actions and a more extensive use of voluntary returns, were presented.

At the same meeting, the new EU Strategy on Voluntary Return and Reintegration was much welcomed and supported by delegations who saw it as quite positive. Delegations also welcomed the focus on voluntary return and affirmed their commitment to it. They agreed on the need to coordinate the approaches towards the voluntary return and reintegration programmes, as well as on the need to ensure the ownership of third countries in reintegration, as proposed in the Strategy.

3.3. Schengen Area

The Schengen Area is an extraordinary achievement for the European Union. It has enabled economic growth, enhanced freedom and promoted technological development. The Portuguese Presidency is committed to contribute to the reinforcement and the well-functioning of that area, by enhancing both its governance and resilience.

3.3.1 Schengen Evaluation and Monitoring Mechanism (SEMM)

On 1 February, the first Schengen Working Party (SCH-EVAL) meeting of the Portuguese Presidency examined the Commission’s report on the functioning of the Schengen Evaluation and Monitoring Mechanism (SEMM) between 2015 and 2019 (presented in November 2020).

There was broad consensus over the conclusions presented by the Commission. At the same time, Member States pointed out a need to improve several aspects, such as streamlining the procedure. This could be done by focusing on the implementation of more strategic recommendations, enabling the necessary funding/financial support, and adapting the mechanism to new technologies, new legal framework and new actors implementing the Schengen *acquis* (Union agencies). Member States were also in favour of maintaining the current “*peer-to-peer*” system and the clear divisions of competences between institutions. They advocated the need to ensure greater governance of Schengen, with greater political support to strategic questions.

At the second Schengen Working Party meeting (March 8), the Portuguese Presidency presented the Draft Council Conclusions on SEMM. The goal was to convey and reiterate to the Commission the positions of the Council, in order to prepare the new strategy on the future of Schengen and the new SEMM proposal. The Member States welcomed the draft.

The Council conclusions on the functioning of the Schengen evaluation and monitoring mechanism were adopted on April 16.

3.3.2. Croatia’s Schengen Evaluation

On February 2, the Commission announced the closure of Croatia’s Action Plan to remedy the deficiencies in the field of external border management, confirmed at the Informal JHA Ministers Meeting, held on March 12.
