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To: Strategic Committee on Immigration, Frontiers and Asylum
Subject: Secondary movements
- discussion paper

Unauthorised movements inside the EU of applicants for international protection and irregular migrants are often referred to as secondary movements. The concept usually also includes beneficiaries of international protection who move for more than 90 days to a Member State other than that which granted international protection. These movements represent a significant challenge for migration management in the EU and for the EU's internal security¹, and undermine the credibility and integrity of the asylum system.

When analysing the phenomenon, we encounter some very basic dilemmas and challenges. The first is the common understanding of the notion of secondary movement, as it involves third country nationals who have varying statuses and are in diverse situations. For the purpose of their joint analysis on secondary movements released in 2020², the European Asylum Support Office (EASO), Frontex and Europol used the following definition of secondary movements:

¹ EASO, Europol and Frontex Joint Analysis on Secondary Movements, September 2020

² Joint Analysis on Secondary Movements; EASO, Europol and Frontex - 25 September 2020 – LIMITED document

"The journeys undertaken by third-country nationals and stateless persons from one EU/SAC to another without the prior consent of national authorities and with or without facilitation.

Consequently, this refers to third-country nationals who:

- a) Have crossed the border to the European Union and Schengen Associated Countries (EU/SAC) illegally or clandestinely via one Member State and then continued their journey within the EU/SAC area to other Member States;
- b) Have entered the EU/SAC legally but no longer fulfil the conditions of stay or residence in the EU/SAC (including third-country visa-free nationals) and move irregularly throughout the territory of the EU/SAC;
- c) Have applied for international protection in one EU/SAC and then travelled further to another for the purpose of illegal stay or lodging a subsequent application."

The second challenge, partially linked to the first one, is the lack of sufficient data and information to determine the scale of secondary movements within the EU, including the trends, details of migrant profiles, drivers, modus operandi and potential facilitators involved in these movements. Eurodac data provides some indication of departures and destinations, although there are several limitations. SCIFA addressed this issue in previous years, when it focused in particular on identifying shortcomings related to gathering qualitative data in a comparable format and gaining an understanding of the phenomenon. In addition, challenges regarding the scope of key EU databases such as Eurodac, the Schengen Information System (SIS) and the Visa Information System (VIS) were highlighted. Delegations were also in favour of gathering and publishing data in a more centralised manner.

Since then, progress has been made on several fronts. Three new SIS Regulations (the SIS recast) entered into force at the end of 2019. According to the latest updated calendar, the new legal basis will be fully operational by June 2022. The SIS recast includes new categories of alerts, such as the return decision alert, to better monitor the obligation to return and to enable the enforcement of return decisions and potential entry bans. In addition, both Europol and the European Border and Coast Guard Agency will have access to all alert categories in the SIS. The interoperability framework was adopted in 2019, and is currently under development. It will ensure improved identity management across the EU's large-scale IT systems, helping prevent and combat illegal immigration by, for example, ensuring the correct identification of persons. Another important step forward is the future Entry/Exit System, set to become operational next year, which will provide oversight and generate alerts to Member States when the authorised stay of third-country nationals crossing the EU external borders has expired.

The weekly Integrated Situational Awareness and Analysis (ISAA) reports, issued in the framework of the Integrated Political Crisis Response (IPCR), provide a weekly overview of the situation in a dedicated chapter, including analysis by EASO of Eurodac data provided to it by eu-LISA and the Commission. Specific initiatives are also being undertaken by EASO, in collaboration with the MS/SAC, Frontex and Europol, to provide further analysis of secondary movements.

A new proposal for a Eurodac Regulation that will broaden the scope of the database for wider migration purposes beyond the current support for the Dublin system was put forward in 2016 and amended in 2020; it would provide much-needed data for a more accurate analysis of secondary movements.

Improved situational awareness is key for a deeper understanding of secondary movements and, in turn, to tailor adequate measures in response to it. Further discussions should aim at exploring how available frameworks and ongoing efforts from different actors at EU level could be strengthened and brought together to feed an integrated approach for data collection and analysis. Given the complexity of the phenomenon, relying on different data sources and on the expertise of various EU stakeholders might help in building a more accurate picture.

Tackling the challenge of secondary movements

Despite the lack of precise numbers, the existence and persistence of the phenomenon remains undisputable. Data from Eurodac provides some indication of departures and destinations. In the first eight months of 2021³:

- Over 131 000 applications for international protection registered by national authorities generated a “Category 1 - Category 1 hit” in Eurodac, meaning that the person has already registered at least one application for international protection in another Member State;
- Over 23 000 applications for international protection (Category 1 data in Eurodac) generated a hit with data registered following an illegal crossing of the external border (Category 2 data in Eurodac) in another Member State. However, some of these registrations of applications in two or more Member States or in a Member State other than the one registering the illegal crossing may occur following a Dublin transfer, and therefore cannot be considered as secondary movements, although the number of effectively implemented Dublin transfers is rather low;

³ Cf. 12742/21: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum.

- 71 620 searches in Eurodac in connection with fingerprints of illegal stayers (Category 3 data in Eurodac) generated hits with Category 1 data, meaning that following the registration of an application for international protection in one Member State a person moved to another Member State where he/she was apprehended for an illegal stay.

Some Member States are also faced with an increase in secondary movements of those who are already beneficiaries of international protection, where beneficiaries move legally to another Member State with legal travel documents issued by the Member State that granted them protection, and then apply for international protection a second time, staying beyond the 90-day authorised period.

Addressing and preventing such secondary movements remains a big challenge for the EU as a whole. Persistently high numbers of such movements can put pressure on host countries, including their reception capacities, asylum systems, economy and security. Multiple asylum applications lodged in different Member States can lead to inefficiencies, administrative overburdening, excessive costs and delays. Given that secondary movements are often perceived to be a misuse of the asylum system, they can negatively influence public and political support for providing protection to refugees. In addition, challenges related to secondary movements can influence the Member States' positions and political stances towards legislative proposals, notably several building blocks of the New Pact, such as the concept of solidarity.

Key drivers of secondary movements are of an economic, social and procedural nature. There are many studies dealing with the subject, a majority of which point to access to labour markets and government support, language, cultural and historical ties, existing social networks and the reputation of destination countries as key pull factors. In the context of national asylum systems, it is important to understand which specific aspects have an impact on asylum shopping. For this purpose, it is necessary to observe and assess differences across Member States and Schengen Associated Countries in terms of recognition rates for particular nationalities, reception benefits for asylum applicants, rights attached to the granting of different protection statuses, including the right to family reunification, etc.

Another challenge in preventing and combating secondary movements is posed by migrant smugglers and criminal networks. In addition to transportation and the provision of fraudulent documents, smugglers regularly advise irregular migrants to apply for international protection if they are detected by law enforcement.⁴ This misuse of asylum procedures enables irregular migrants to temporarily legalise their residence status while onward facilitation is being arranged by criminals. Migrant smuggling networks sometimes have access to and make use of experts with knowledge of migration legislation, such as lawyers and other specialists, on a crime-as-a-service basis.⁵

Several proposals presented in 2016 and 2020 are aimed at tackling these drivers. Proposals from 2016 on reception conditions, asylum procedures and qualification, as well as proposals for an Asylum and Migration Management Regulation and the amended Asylum Procedures Regulation include several provisions to ensure that the Common European Asylum System works better as a whole to make it less prone to asylum shopping. The EASO also contributes to this objective by preparing various documents (e.g. country and policy guidance, reception strategy, training, Information and Documentation System (IDS), mapping on organisational policies and practices in the asylum procedure in each country, pilot project on secondary movements, etc.) as means to foster convergence or better understand secondary movements.

Other relevant provisions connected with secondary movements:

- Faster border procedures followed by swift return procedures should speed up decision-making and make asylum procedures more efficient, thus reducing unauthorised movements.
- Refining the responsibility criteria: by extending the definition of family members to include siblings and families formed in transit in order to make them a part of the binding criteria and reduce future unauthorised movements for these purposes; by including a new criterion according to which a Member State that issued a diploma to a person is responsible for their asylum claim; and by extending the applicability of the criteria on visa/residence permits and irregular entry, thus reducing the incentive for waiting to apply for international protection until the time limits have passed.

⁴ Europol (2021), European Union serious and organised crime threat assessment, April 2021

⁵ Europol (2021), European Union serious and organised crime threat assessment, April 2021

- Where an applicant does not comply with the obligation to apply for asylum in the country of first entry, reception conditions should be withdrawn.
- Abolition of rules on the cessation and transfer of responsibility where those rules were dependent on the behaviour of the applicant. In addition, the proposal significantly shortens the take-back procedure, and responsibility is no longer transferred if the time limits are not respected.
- As regards creating incentives for beneficiaries of international protection to remain in the Member State which granted international protection, the prospect of long-term resident status is reduced from five to three years of legal and continuous residence in that Member State. This would also help their integration into local communities.

Questions:

- 1) What is your assessment of the progress achieved in scoping secondary movements over recent years? Do the current tools, collecting and reporting of figures provide a sufficient level of knowledge/awareness of the phenomenon?
 - 2) In your opinion, what are the key challenges related to addressing secondary movements? To which next steps should priority be given?
 - 3) Should a link be drawn between secondary movements and the fair sharing of solidarity?
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