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NOTE

From: Presidency
To: Council

Subject: Asylum/migration: review of progress made in the first stage
– *Progress report*

Building on the work done by the previous presidencies on the Pact on Migration and Asylum proposed by the European Commission on 20 September 2020, the Presidency proposed a step-by-step approach in which, at each stage, equivalent progress is made on the various strands (in particular: the external dimension, protecting the external borders, solidarity, responsibility). This approach was widely supported at the informal meeting of home affairs ministers on 3 February 2022.

At the JHA Council meeting on 3 March, following preparatory discussions in Coreper, the Presidency presented a report (6264/22) proposing the possible content of a first stage:

- operationalisation of the external dimension, including as regards returns;

- checks and registration at the external borders;
- financial, human and material support for Member States responsible for the protection of the external borders;
- solidarity in terms of hosting people (including a relocation mechanism);
- more effective implementation of the Dublin rules;
- convergence of asylum practices.

Discussions in the Council have continued in recent weeks, including in the light of some of the lessons learned from the experience of hosting people fleeing the war in Ukraine. Firstly, this crisis has confirmed the even greater urgency of the abovementioned main strands of the first stage and the need to prioritise them. It has also shown that the European Union can act quickly when it gives itself the means to do so, and that it was able to respond in pragmatic and coordinated ways. Lastly, it has demonstrated the importance of the support that the EU's agencies and budget can provide to the Member States.

1. OPERATIONALISATION OF THE EXTERNAL DIMENSION, INCLUDING AS REGARDS RETURNS

In the context of strengthening the external dimension of migration, the Council established MOCADDEM (operational coordination mechanism for the external dimension of migration) on 12 January 2022. The purpose of this mechanism is to determine who is responsible for each specific action to be carried out, and the timeline envisaged.

In addition to an in-depth discussion on several topics (cooperation with third countries to combat the instrumentalisation of migration flows, definition of priorities for Frontex within the framework of its new mandate as regards external cooperation, impact of the conflict in Ukraine on the external dimension of migration, alignment of the Council's priorities and the implementation of funds in the area of migration, in particular the Neighbourhood, Development and International Cooperation Instrument (NDICI), monitoring and roll-out of the Team Europe initiatives on migration routes) and the identification of the main areas of cooperation for several key countries (follow-up of priority action plans with Iraq, Afghanistan, Tunisia, Morocco, Bosnia and Herzegovina, Niger, Nigeria and Libya, establishment of new action plans with Pakistan and Egypt, and structured discussions on Serbia, Turkey and Côte d'Ivoire), MOCADDEM has coordinated actions in relation to over 10 countries (*Iraq, Niger, Tunisia, Nigeria, The Gambia, Afghanistan, Bangladesh, Pakistan, Senegal, Mauritania and Bosnia and Herzegovina*). A review process for each of these actions is under way.

This work has focused firstly on preventing departures and combating migrant smuggling, and in particular on Frontex cooperation directly in the countries of departure (work enabling the Commission to submit mandates for status agreements with Senegal and Mauritania). MOCADDEM has also supported the introduction of an operational approach to returns to certain third countries on the Eastern route, based on mutual support and benefiting in particular Member States particularly affected by irregular flows. The Presidency hopes to see rapid strengthening of cooperation on readmission by those countries in order to facilitate the organisation of return flights. The newly appointed EU Return Coordinator will also work to strengthen this mutual support among the Member States in order to ensure the effectiveness of EU action in the context of the implementation of the common EU system for returns.

In addition, the Council and the Commission have embarked on a process of strategic relaunching of readmission instruments, so that the European Union can conclude the current negotiations as soon as possible. Together with the Commission, the Council is to determine the resources needed to relaunch and conclude negotiations with Morocco, Tunisia and Nigeria and to open negotiations with Algeria, using all the levers and incentives available to the EU and the Member States. Those discussions will begin on 15 June in the IMEX Working Party.

This work, and more generally the cooperation of third countries on readmission, will build on the process initiated by virtue of the link between readmission and visas set out in Article 25a of the Visa Code. On the basis of the guidance given by the Council preparatory bodies back in January, the Commission should soon submit proposals to restrict the issuing of visas for countries that are not cooperative on readmission, or to facilitate it for countries that are. The Council should examine those proposals swiftly.

Furthermore, on 27 April 2022 the Commission published its ‘Skills and Talent’ package, which aims to strengthen cooperation with third countries and improve migration management in the long term.

Lastly, the formal launch of the Team Europe regional initiatives on the Mediterranean and Atlantic migration routes, scheduled for 21 June 2022, will make it possible to coordinate and give greater visibility to all the EU’s and the contributing Member States’ support vis-à-vis African partners. In this context, a significant financial effort is expected from the EU budget, in particular through NDICI - Global Europe.

2. CHECKS AND REGISTRATION AT THE EXTERNAL BORDERS

Within the framework set by the first stage, the Presidency resumed discussions on the Eurodac and Screening Regulations with a view to agreeing a general approach or a negotiating mandate.

On the Screening Regulation, discussions have led to increased flexibility for the Member States, both on the places where this procedure would apply and on the measures that could be taken to prevent people absconding during the procedure. The discussions have confirmed the scope of the Regulation, namely the three categories of third-country nationals who do not fulfil the entry conditions: persons apprehended in connection with an unauthorised crossing of the external border, persons disembarked following a search and rescue (SAR) operation at sea, and persons who have submitted an application for international protection at an external border crossing point or in a transit zone. Lastly, it has been established that, for the duration of the screening procedure only, people should be kept available to the authorities and should not be authorised to enter the territory of the Member States. The Presidency has presented a new compromise, examined by the JHA Counsellors on 13 May and 3 June, with a view to reaching an agreement reflecting these principles within the framework of a Council general approach or a negotiating mandate on this text, applying the gradual approach and working in parallel with the creation of a solidarity mechanism. **The Presidency proposes to clarify in the Screening Regulation that, taking account of the fact that screening should contribute to ensuring referral to the appropriate procedures, the obligations stemming from the Screening Regulation should be without prejudice to the provisions of the applicable rules on international protection, relocation or return procedures.**

As regards the Eurodac Regulation, as provided for in the first stage, the Presidency proposed to create a ‘SAR’ category for persons disembarked after search and rescue operations at sea. The compromise texts presented to JHA Counsellors on 6 and 20 May and on 3 June have enabled significant progress to be made on the creation of this category. The deadline for the transmission of data for this category may be extended from three to five days in the event of a sudden inflow, after notification to the Commission. In addition, drawing lessons from the solutions put in place to respond to the influx of people fleeing the war in Ukraine, the Presidency proposed to include in the Eurodac database the category of beneficiaries of temporary protection; the Member States have supported the objective of having an effective tool for registering the persons concerned by this specific status. Finally, the adoption of the Eurodac Regulation will have the effect of completing the legal framework for interoperability.

3. FINANCIAL, HUMAN AND MATERIAL SUPPORT FOR MEMBER STATES RESPONSIBLE FOR THE PROTECTION OF THE EXTERNAL BORDER

Significant funding has been allocated for the period 2021-2027 in the area of home affairs: the financial allocations involved amount to more than EUR 18 billion, of which more than 60 % is allocated to Member States’ programming and the rest to the thematic facility instrument. In addition, some EUR 11 billion are available for the functioning of the six agencies responsible for home affairs.

Member States have submitted to the Commission draft programmes covering the whole programming period and may, with the Commission’s approval, decide on their national allocations. Thus, financial resources are allocated to objectives and actions according to the national needs identified and in accordance with the minimum budget shares per objective set out in the Fund-specific Regulations. A mid-term review with additional allocations to Member States is planned in 2024.

There are also plans to inject into Member States' programmes around 60 % of the amount of EUR 1.7 billion which is available under the 'thematic facility', managed at a centralised level by the Commission, for the period 2021-2022. Thus, the Commission proposed to fund projects to support reception, asylum and return systems exposed to continued high migratory pressure at the EU's external borders through a call worth EUR 188.5 million in January 2022. The thematic facility, which accounts for just under 40 % of the overall funds, is also a key instrument in increasing financial flexibility in the implementation of home affairs funds.

In response to the influx of people fleeing Russia's military aggression of Ukraine, the Commission has proposed to redeploy and facilitate the use of existing funds under the previous financial framework, making available an additional EUR 3.5 billion for 2022 for the benefit of Member States depending on the number of people arriving from Ukraine. Various measures were adopted by the Council in March and April 2022 to better mobilise the Asylum, Migration and Integration Fund (AMIF) and the Border Management and Visa Instrument (BMVI), as well as the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU), cohesion policy funds and the Fund for European Aid to the Most Deprived (FEAD).

The EU agencies have also been fully mobilised to support the Member States most heavily affected by migratory flows, both from Ukraine and from more established migration routes. This support needs to be continued and strengthened where necessary.

4. SOLIDARITY IN TERMS OF HOSTING PEOPLE (INCLUDING A RELOCATION MECHANISM)

As part of the first stage and to ensure a proper balance between the various strands, in particular between solidarity and responsibility, the Presidency proposed the definition of a solidarity mechanism with the aim of effectively alleviating, in the short term, pressure on the Member States of first entry, which continue to face arrivals of significant numbers of people.

It was in this spirit that the Presidency, after numerous exchanges, both in Coreper and SCIFA and in bilateral or multilateral meetings, drew up a draft declaration by Member States on the creation of a voluntary solidarity mechanism to deal with situations of migratory pressure on the various Mediterranean and Atlantic routes: this draft has received very strong support in principle. Such a mechanism, which the Presidency intended to be simple, predictable, credible, effective and flexible, sets an indicative annual total of relocations of persons in need of protection, while allowing alternative contributions, and thus offers tangible support in the face of migratory pressure. Relocations would primarily benefit Member States facing disembarkations following SAR operations at sea, as well as other situations such as that faced by Cyprus or possible developments in the Greek islands. The decision to relocate, and the number of persons concerned, is based on the wishes of the contributing Member States and depends on their respective capacities.

States not participating in the solidarity mechanism through relocations will be able to make an alternative solidarity contribution, either in a financial form or in other forms (e.g. human resources, material resources, or support for projects in third countries), provided that such contributions correspond to the needs expressed by the beneficiary Member States. At the request of the Member States, it is proposed that the Commission, subject to its agreement, be given the role of coordinator of this solidarity mechanism (in particular to identify the needs of the beneficiary countries).

The solidarity mechanism will apply from the date of adoption of the general guidelines or negotiating mandates on the Screening and Eurodac Regulations. An agreement on the declaration of solidarity and on these two texts would provide the confidence necessary to make progress on the negotiations — both in the Council and with the Parliament — on the various pieces of legislation.

The draft declaration is also enclosed with this report.

5. ENHANCING IMPLEMENTATION OF THE DUBLIN REGULATION

As part of the first stage of the gradual approach and in the context of the gradual removal of public health constraints, the Presidency proposed to examine ways to enhance implementation of the Dublin Regulation. First, in order to harmonise information exchange practices and improve cooperation between determining authorities, Member States gave their support in principle to the harmonised form for replying to a request for information via the network for the exchange of information between the Dublin Units. In addition, Member States were encouraged to build on the bilateral arrangements that may be concluded under Article 36 of the Regulation, to exchange liaison officers, simplify procedures and shorten deadlines.

6. IMPROVING CONVERGENCE OF ASYLUM PRACTICES AND DECISIONS

Noting the persistence of sometimes very considerable differences in the levels of protection afforded to nationals of the same third country in the Member States of the European Union, the Presidency has begun work to identify specific ways in which to encourage the approximation of the practices of the Member States' determining asylum authorities. The aim of this work is to strengthen the Common European Asylum System (CEAS), in particular by reducing the differences in protection rates for the main nationalities concerned. To that end, the Presidency took full advantage of the opportunity afforded by the launch of the new European Union Agency for Asylum (EUAA) on 19 January 2022 to give fresh impetus to this work.

There were several very constructive exchanges on that subject, both at SCIFA strategic level (on 16 February) and at the meetings of the Asylum Working Party (on 22 February), of the JHA Counsellors (on 12 April and on 3 June), and of Coreper on 2 March. During those discussions, the Member States unanimously stressed the importance and value of the guidelines drawn up by the EUAA. It has been pointed out that the scope of those guidelines could be further enhanced, in particular, by Member States becoming more closely involved in their preparation and regular updating, as well as by greater ownership of those guidelines not only by the determining authorities but also by the asylum courts in the Member States. The effectiveness of those guidelines also requires an increase in the number of countries of origin covered by the briefing and strategic analysis notes produced by the EUAA – with the assistance of the Commission to strengthen the operational capacity and resources of the Agency – whose work is of paramount importance in order to achieve the convergence objective.

With that in mind, the Presidency has proposed a roadmap for the convergence of asylum practices, calling on each of the stakeholders concerned (Member States, Commission, Asylum Agency) to step up its actions. In particular, the Asylum Agency is invited to continue its work on identifying other factors explaining differences in practices between Member States, beyond the sole criterion on protection rates.
