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On 23 and 29 February 2012, the JHA Counsellors were invited to give further reactions to the amended draft Council Conclusions produced on the basis of discussions held at the informal JHA Council meeting on 26<sup>th</sup> January 2012 and at SCIFA on 13<sup>th</sup> February 2012 and their written comments.

With a view to adopting the draft Council Conclusions for a common framework for genuine and practical solidarity at the JHA Council on 8 March, the Presidency invites the Committee of Permanent Representatives to examine the latest draft set out in the annex and to prepare the position of the Council. Amendments to the text compared to the version that was discussed on 29 February 2012, have been highlighted in **bold and underlining**, whereas deletions have been highlighted in ~~underlining and strikethrough~~.

**Draft Council Conclusions**

**A Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows**

1. *Recalling the principle of solidarity and fair sharing of responsibility between Member States in the area of border checks, asylum and immigration as set out in the Treaty on the Functioning of the EU and considering it necessary to examine the ways in which it can be given effect;*
2. *Recalling the principles contained in the European Pact on Immigration and Asylum and the relevant commitments to achieving a Common European Asylum System by 2012 as set out by the Stockholm Programme. Also recalling the European Council Conclusions of 24 June 2011, calling for genuine and practical solidarity towards the Member States most affected by migratory flows;*
3. *Affirming the need to strengthen the establishment of a Common European Asylum System by ensuring the efficient and uniform application of the existing Union acquis and implementation of new EU legislation;*
4. *Highlighting the need for genuine and practical solidarity towards the Member States most affected by **asylum and** mixed migratory flows resulting in an extraordinary burden on their asylum and migration systems;*

5. *Affirming the need to lay strong foundations for mutual trust, built upon Member States' individual responsibility to adhere to their EU and international obligations in law and in practice and noting that solidarity and responsibility go hand in hand;*
6. *Affirming that the framework ~~for~~ ~~of~~ genuine and practical solidarity is a flexible and open 'tool box' compiled ~~of~~ both ~~of~~ existing and possible new measures. All the measures and actions should underpin each other and create synergies and concrete results. ~~With~~ ~~b~~**Bilateral** cooperation, ~~which~~, if well coordinated with actions at Union level, can complement and add value to those at EU level.*
7. *Affirming that a Common European Asylum system with high protection standards combined with fair and effective procedures capable of preventing abuse presupposes effective border management, well functioning return arrangements and cooperation with third countries inter alia to address the root causes leading to mixed migration flows to the Union.*

The Council adopts the following conclusions establishing a Common Framework for genuine and practical solidarity consisting of the following:

#### **Solidarity through Responsibility and Mutual Trust**

8. Responsibility and mutual trust being the pillars on which the common framework on genuine and practical solidarity should be built.

- i. Member States should fully abide by their commitments to respect in fact and law their EU and international obligations in asylum and migration law.
- ii. Member States should ensure that fair and efficient asylum systems are in place ~~to~~ manage fluctuating asylum and mixed migration flows as an element of better migration management in the Union. **Such a** ~~A~~ well-functioning and robust system should enable a Member State to be fully prepared to cope with migratory fluctuations and **be able** ~~to~~ have systems in place enabling them to receive solidarity measures.

### **Solidarity through a Mechanism for Early Warning, Preparedness and Crisis Management within the Dublin System**

9. Development of a mechanism for early warning, preparedness and crisis management to be anchored in the Dublin Regulation to prevent and actively respond to situations whereby a Member State's asylum system is subject to particular pressure, **including as a result of mixed migration flows** and/or presents deficiencies.
  - i. The Council and the Commission are invited to further elaborate on the structure and functions of a process for early warning, preparedness and crisis management to be set out in the Dublin Regulation aiming at conducting **negotiations** ~~discussions~~ with the European Parliament on the proposal in the first semester of 2012.

10. Detecting situations likely to give rise to particular pressures in advance **where possible** is vital if the Union is to be in a position to assist a Member State in a timely manner. Detection through monitoring should, as part of the general management of asylum systems, provide for a structured, consecutive course of action to address deficiencies before they potentially grow into a fully fledged crisis.
- i. **Member States are encouraged** to provide the European Asylum Support Office (EASO) and the Commission with relevant data on asylum, in addition to the data provided pursuant to the Migration Statistics Regulation **and the EASO Regulation**.
  - ii. **EASO** is invited to **assist in the implementation of** ~~contribute to~~ the early warning, preparedness and crisis management mechanism to be set out in the Dublin Regulation and to report to the Council and the European Parliament on the basis of information gathered in accordance with its mandate.
11. Solidarity measures should be triggered at the substantiated request of the Member State concerned and **where relevant**, politically discussed at the level of the Council. They should be backed up by objective data and statistics to demonstrate the need for preventive action and, if needed, intensive crisis management.
- i. **Member States** subject to particular pressures on their asylum systems should consult the Commission, the EASO and other Member States on possibilities for supporting measures at the earliest possible stage of the process.

## Solidarity through preventive cooperation

12. Providing solid foundations for mutual trust by enhancing the collaboration and practical cooperation between Member States' asylum authorities, under the coordination of the EASO.
  - i. Member States should make best use of the EASO's operational tools to strengthen their capacity. For example, they should endeavour to train or enhance the competences of their asylum officials by making use of tools such as the European Asylum Curriculum and COI Portal as much and as soon as possible.
  - ii. Member States should contribute to the EASO's activities to enable EASO to fully develop operational tools in accordance with its mandate.
  - iii. EASO should evaluate the methodology of deployment of the Asylum Support Teams and suggest improvements if necessary.
  - iv. **Member States are encouraged to offer where possible any necessary human and material resources in order to assist EASO achieve its aims and fully implement its actions, including where possible any technical and operational assistance.**  
~~Member States should offer, where possible, their own expertise to EASO to help with any technical and operational assistance to needs EASO may have in order for its main office headquarters to become fully operational by the 3rd quarter of 2012.~~

- v. EASO, supported by the Commission and with the full commitment of the Member States, is invited to ensure that it implements all the projects described in its 2012 Work Programme.
- vi. The Council and the European Parliament are invited to further the negotiations on the proposal for a European Border Surveillance System (EUROSUR) in order to better prevent and tackle illegal migration and cross-border crime as well as reduce the loss of lives at sea.

### **Solidarity in Emergency Situations**

- 13. EASO and FRONTEX making full use of their mandates in order to assist Member States subject to particular pressure. Assistance to Member States by these agencies should be tailor made to their specific needs.
  - i. Member States should continue to contribute experts to the EASO Asylum Intervention Pool in accordance with the EASO Regulation and make these experts available rapidly and for the necessary duration when called upon. Member States are encouraged to provide assistance in accordance with EASO operating plans.
  - ii. Member States are invited to show further solidarity by offering additional support measures on a bilateral basis, in consultation with EASO, to complement existing solidarity tools.

- iii. EASO should consider how best to make use of new technologies that are cost effective such as using videoconferencing, for interpretation services or asylum interviews, and for general communication on a daily basis.
- iv. EASO and the Member State concerned should continue to remain in close dialogue so that asylum support is adequate with the needs of the Member State.
- v. FRONTEX should provide assistance through the coordination of Member States' actions **and efforts** for control and surveillance of external borders, including a continuous **monitoring assessment** with consultation **of from** Member States concerned ~~monitoring~~ and thorough risk analysis of emerging and present threats from illegal immigration and propose appropriate measures to take to tackle identified threats.
- vi. FRONTEX should prepare in accordance with its mandate as well as applicable EU and international law clear and detailed common operational procedures for border guards containing operational procedures for joint operations both on land, at sea and at airports, with due regard to ensuring access to the asylum procedure.
- vii. FRONTEX should consider if following a request by the Member State concerned the conditions necessitate the deployment of European Border Guard Teams to that Member State for a specific period of time.



- viii. FRONTEX in cooperation with the Member State concerned should agree on an operational plan to be drafted as soon as assistance is requested, detailing the precise conditions for deployment of border guard teams.
- ix. FRONTEX should strengthen its operational cooperation with third countries in particular with the competent border control authorities of Turkey and other key countries of **origin and** transit such as the Southern Mediterranean, **Eastern Partnership countries and Western Balkans.**
- x. FRONTEX should offer as a more long-term measure, assistance with coordinated specialised training for border surveillance and control, where relevant in cooperation with CEPOL.
- xi. Member States are invited to continue or enhance their support to FRONTEX's operational activities under its recently revised mandate by providing technical expertise, equipment and border guards.
- xii. The Commission should, in collaboration with EASO and FRONTEX, monitor the impact of such assistance and make recommendations for further targeted solidarity measures if needed.

- xiii. Member States and the Commission should ensure synergy between the programming of their respective allocations under the External Borders Fund and the European Return Fund on one hand and the support offered by FRONTEX on the other hand, thereby providing for cost-effectiveness and the best added value of using available financial resources at European level.

### **Solidarity through strengthened cooperation between EASO and FRONTEX**

14. Strengthened coordination between the relevant EU agencies to provide a rapid **assistance response** to a Member State that is faced with ~~processing a large number of irregular migrants and/or asylum seekers to determine those who need international protection from~~ **large** mixed migration flows **to determine those who need international protection**. These agencies should work within the scope of their respective mandates, openly and in close cooperation when Member States are subject to disproportionate pressure.
- i. EASO and FRONTEX are invited to continue close cooperation both at expert and management level with regular reporting to their respective management boards of the two agencies to **help** ensure a focused approach to asylum, **border and return** management.
- ii. EASO and FRONTEX are invited to continue to work with other EU Agencies and international organisations, such as the UNHCR and IOM, **to assist the Member State** **to** ensure an efficient border control **and access to the asylum procedure** ~~and an effective protection of those in need international protection.~~

## Financial Solidarity

15. To ensure financial solidarity whereby funding can be released quickly and will allow for the EU to respond appropriately to unexpected pressure and to crises in the area of asylum affecting one or more Member States.
- i. **Further discussions between tThe Council** and the European Parliament **on are invited to further negotiations for the new** Asylum and Migration Funds, ~~And~~ Internal Security Fund and **the Horizontal Regulation on these funds should** ~~to~~ allow Member States to make full use of the funds in practice right from the beginning of the new multi-annual budgetary period, **also available on short notice** and taking into account flexible financial procedures that allow for emergency funding.

## Solidarity through Relocation

16. Ensuring that any further steps on voluntary relocation of beneficiaries of international protection within the EU are taken in light of lessons learnt.
- i. The Commission with **the support of Malta, and** other Member States concerned **and EASO** is invited to undertake a full evaluation of the Pilot Project for intra-EU Relocation from Malta (EUREMA) to ascertain its benefits and successes for those participating Member States and beneficiaries of international protection as well as any difficulties and challenges that may have occurred.

- ii. EASO should promote, facilitate and coordinate exchanges of information and other activities related to relocation within the Union.

### **Solidarity through the Temporary Protection Directive**

- 17. To consider the Temporary Protection Directive as a further measure of solidarity that could be triggered in case of a mass influx of displaced persons taking into account the efforts already made by Member States in offering protection and processing asylum applications.
  - i. The Council should consider whether a large influx of displaced persons fulfil the criteria to invoke the Temporary Protection Directive if a proposal from the Commission to do so has been made, including following a request by a Member State.

### **Joint EU Processing of Asylum Claims as a possible tool of Solidarity**

- 18. Ensuring that the feasibility and legality of joint processing of asylum claims within the EU is explored intensively before any such possible proposal is put forward.
  - i. The Commission is invited to conclude its study on the feasibility of joint processing of asylum claims within the EU by the end of 2012 and report on its findings and recommendations as soon as possible thereafter.

## Solidarity in the area of Returns

19. To ensure a strengthened cooperation for returning those who are illegally staying in the territory of a Member State to their country of origin.
- i. **Member States should share best practices and cooperate in order to foster voluntary departure as the preferred return option including joint reintegration activities.**
  - ii. The Commission together with the Council/Member States are invited to step up their efforts enabling the conclusion of the EU readmission agreements with key countries of origin and transit with which the negotiations are still ongoing or have recently been finalised. They should also launch a discussion on the important countries of origin of illegal immigration with which EU readmission negotiations might be considered and on possible tailor-made incentives **defined on a case-by-case basis and according to the particular needs of both sides** which could bring such negotiations to successful conclusion. They will step up their efforts aimed at the proper implementation of the readmission obligations laid down by the EU readmission agreements in force, and, where applicable, by other international agreements concluded by the EU. **Future readmission agreements should also contain language stating that each party will in particular ensure, in compliance with their respective obligations under the relevant international instruments, the protection of the rights of persons readmitted to its territory.**

- iii. ~~Member States should share best practices and improve operational co-operation on joint return operations for third country nationals illegally staying present in Member States. Member States should share best practices and cooperate in order to foster voluntary departure as the preferred return option including joint integration activities.~~
- iii. Member States should endeavour to return directly to countries of origin those with no legal right to stay in the territory of a Member State rather than transfer returnees to other Member States under existing bilateral agreements.
- iv. FRONTEX should offer assistance with the coordination and organisation of joint return operations - including through the chartering of aircraft for the purpose of such operations- for third country nationals illegally staying in Member States in accordance with its new mandate adopted in 2011. This assistance should also include coordination **and organisation** of joint return operations of the Member States which are co-financed under the European Return Fund and where possible by other financial means of the EU in the field of return. **Member States should share best practices and improve operational co-operation on joint return operations for third country nationals illegally staying present in Member States.**
- v. Member States should **in a timely manner** ~~regularly~~ inform ~~the Agency~~ **FRONTEX** of their needs for assistance or coordination by the ~~A~~agency. To that extent ~~the~~ **FRONTEX Agency** should draw up a rolling operational plan to provide the requesting Member States with the necessary operational support, including technical equipment.

- vi. FRONTEX should establish as soon as possible and at the latest by the end of 2012, the Code of Conduct envisaged in the recently revised FRONTEX Regulation.
- vii. FRONTEX should also enhance cooperation with third country authorities on best practices on acquisition of travel documents and return and regularly report back to Council on the results achieved.

**Solidarity through strengthened cooperation with key countries of transit, origin and first countries of asylum**

- 20. Fully supporting the need to take forward and intensify mutually beneficial cooperation with key countries of transit and origin with a particular focus on neighbouring regions to respond to increasing and changing migration trends in a more efficient and strategic manner in conformity with the objectives, priorities and implementation of the Global Approach to Migration including through the use of Mobility Partnerships.
  - i. The EU and its Member States should endeavour to assist third countries to strengthen their asylum systems and national asylum legislation including by EASO continuing to offer their expertise in various ways including through government to government cooperation in twinning like arrangements.
  - ii. The EU and its Member States should endeavour **to assist** ~~should continue to build up capacity in~~ key countries of transit, origin and key countries of first asylum in regions of origin **to build capacity** and **to** share best practices on asylum and border and migration management.

- iii. The EU and its Member States should strengthen the use of Regional Protection Programmes to ensure that assistance reflects the different needs in the affected regions and countries and supports third countries in becoming providers of effective international protection in accordance with international law as well as initiating development programmes and projects that have direct benefits for the local integration of refugees and affected host communities through self-reliance strategies and national poverty reduction strategies. **Any such projects must ensure respect for human rights and take into account the most vulnerable groups.**
- iv. **The Council and the Parliament are invited to confirm the political agreement by rapidly adopting the proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows'.**
- v. The EU and its Member States Council and the Parliament is invited to ~~discuss the possible elements of in a Joint EU Resettlement Programme on a voluntary basis and~~ to consider strategic and effective use of **resettlement, including by providing for effective** financial assistance for resettlement activities.
- vi. Member States are encouraged to establish, continue and further develop national resettlement schemes on a voluntary basis.
-