

European Commission – Non paper

"No registration no rights"

In his recent intervention on the migration crisis at the European Parliament, President Juncker referred to a key principle which should fully apply in order to restore order: "no registration no rights". The Presidency asked the Commission to present a written contribution on what this means in practical terms, to be communicated before the meeting of the Council on 9 November.

In order to face the unprecedented challenges of managing and slowing down the current migration flows arriving on the EU territory it is of outmost importance that Member States apply the comprehensive set of EU legal instruments in the area of border controls, asylum and return¹, in a spirit of solidarity, responsibility and pragmatic cooperation. These instruments should be used consistently and to their full potential, with the objective to build up mutual trust and restore order in the management of migration flows.

Registration of migrants, irrespective whether they are refugees and apply for international protection or economic migrants that should be returned to their countries of origin, is the precondition to put order in managing the flows and setting the rights and duties of migrants, in full respect of fundamental rights and principles. In addition to the registration obligations, this paper outlines the main obligations and tools Member States have under the EU *acquis* to manage effectively migrants and asylum seekers, and in particular their non-cooperative behaviours.²

The Commission stands ready to provide the Member States with more developed and practical guidelines on each of the points outlined below.

Finger printing and registration

Member States should:

- take the fingerprints of every third-country national or stateless person who is apprehended by the competent control authorities in connection with irregular crossing by land, sea or air of the border (and not turned back);
- inform individuals that, under EU law, they do not have the right to choose the Member State in which they would like to apply for asylum and that if they intend to apply for asylum they should do so in the Member State of first entry. Close cooperation should be ensured with UNHCR and other relevant organisations so that all migrants and asylum seekers are properly informed of their rights and obligations as early as possible in the procedure.
- swiftly register and enable individuals who have expressed the wish to apply for international protection, to lodge their applications with the competent authorities;

¹ Schengen Borders Code, Asylum Procedure Directive, Dublin and EURODAC Regulations, Reception Conditions Directive, Qualification Directive and Return Directive

² Careful consideration must be given to the situation of vulnerable migrants and asylum seekers for which the EU *acquis* provides specific safeguards.

External Border crossings

Member States should:

- ensure that third-country nationals seeking to enter their territory satisfy the entry conditions laid down in the Schengen Borders Code;
- refuse at the external border entry to those third-country nationals who do not satisfy the entry conditions, without prejudice to the rights of persons seeking international protection;
- apprehend and make subject to the return procedures, subject to the principle of *non-refoulement*, all persons who cross a border illegally and who have no right to stay on the territory of the Member State concerned, including those who have not applied for asylum despite being informed on the possibility to do so;
- prevent third-country nationals from leaving their territory in an unauthorised manner by crossing the border outside the border crossing points.

International and subsidiary protection

For individuals who have expressed the wish to apply for international protection, Member States must:

- impose upon applicants the obligation to cooperate with the competent authorities in view of ensuring the processing of their applications;
- inform applicants on the procedure to be followed, of their rights and obligations during the procedure and of the possible consequences of not complying with their obligations and not cooperating with the authorities;
- take the fingerprints of every applicant for international protection being at least 14 year old;
- determine rapidly the Member State responsible to examine the application under the Dublin Regulation;
- ensure that those applicants present in Italy and Greece and who have one of the nationalities for which the average EU recognition rate is equal or above 75% are screened with a view of possible relocation under the relocation Decisions;
- provide appropriate reception conditions for applicants, sufficient to ensure a dignified standard of living;
- prevent **secondary movements** of applicants to other Member States in particular by:
 - informing applicants that they do not have the right to travel to other Member States pending the examination of their application;
 - not issuing national travel documents (except for serious humanitarian reasons);
 - not providing incentives, such as financial ones, to facilitate their irregular movement to other Member States;
 - in case of irregular movements sending back the person to the Member State responsible.

In addition, Member States could also consider:

- imposing reporting obligations;
- making provision of material reception conditions subject to actual residence by the applicants in a specific place/area, to be determined by the Member State.

Member States should make full use of the tools existing under the asylum *acquis* for the cases of non-compliance by an applicant with the duty to cooperate with the authorities and in particular:

- systematically apply the measures provided for in the Commission Staff Working on fingerprinting, as endorsed by the Council on 20th July 2015³ in case an applicant refuses to comply with the obligation to provide fingerprints. The same applies for persons who irregularly cross Member States' external borders;
- consider using accelerated and/or border procedures, under the conditions and safeguards laid down in the asylum *acquis*;
- consider imposing on the applicant the duty to submit as soon as possible all the elements needed to substantiate the application. If the applicant fails to observe the duty to cooperate, by, for instance, concealing relevant information or misleading the authorities, Member States may refuse to apply the benefit of the doubt with regard to applicant's statements which are not supported by documentary or other evidence and hence reject those applications.
- in case of misrepresentation or omission of facts, including the use of false documents, which were decisive for the granting of international protection status, Member States should revoke, end or refuse such status.
- discontinue the examination of an application or, where there has been an adequate examination of its substance, reject such application, where there is reasonable cause to consider that the applicant has implicitly withdrawn his application, such as when he absconded or left without authorisation the place where he lived or was held.
- consider applying the tools provided for under the asylum *acquis* for dealing with certain applications as subsequent applications and the limited rights granted to applicants as of, in particular, the second subsequent application, notably the possibility to derogate from the right to remain on the territory during the first instance examination, subject to the *non-refoulement* principle.
- non-observance of the duty to cooperate may contribute to establishing that the applicant presents a risk of absconding, justifying as a measure of last resort his/her detention under the conditions and safeguards laid down in the asylum *acquis*, in particular: for the purpose of determining those elements on which the application is based and which could not be obtained in the absence of detention; in order to secure Dublin transfer procedures; in order to prepare the return and/or carry out the removal process, and where there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision.

³ <http://data.consilium.europa.eu/doc/document/ST-11013-2015-INIT/en/pdf>

Return of irregular migrants

For individuals who have not expressed the wish to apply for asylum and/or do not have the right to stay on the territory, Member States must, in accordance with fundamental rights as general principles of EU law as well as international law, including refugee protection and human rights obligations:

- apply the return procedure wherever possible;
- take all necessary measures to enforce return decisions, respecting the existing safeguards on coercive measures;
- apply detention measures only in situations in which it is clear that the use of detention is the only way to make sure that the return process can be prepared and the removal process can be carried out and only if there is a risk of absconding or the third-country national concerned avoids or hampers the preparation of return or the removal process.