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NOTE

From: Presidency
To: Delegations

Subject: Solidarity and responsibility in the Common European Asylum System
- Progress report by the Slovak Presidency

In view of the Justice and Home Affairs Council on 8-9 December 2016, delegations find attached a Presidency Progress report titled 'Solidarity and responsibility in the Common European Asylum System'.

**Solidarity and responsibility in the Common European Asylum System
Progress report by the Slovak Presidency**

According to Article 78 of the Lisbon Treaty, the Union '*shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties*'. Article 80 indicates that '*the policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle*'. These principles, which apply to all Member States, are the reference for the Presidency's work.

The Bratislava roadmap proposed on 16 September 2016 by the President of the European Council, the Presidency of the Council and the Commission refers to the need to '*broaden EU consensus in terms of long term migration policy, including on how to apply the principles of responsibility and solidarity in the future*'. In its conclusions of 20-21 October 2016, more precisely, the European Council '*calls for work to be continued on the reform of the Common European Asylum System, including on how to apply the principles of responsibility and solidarity in the future*'.

Since the beginning of its term, the Presidency has conducted extensive work on the reform of the Common European Asylum System, scheduling a high number of working party meetings and devoting ample time in Coreper and in the Council to the examination of the seven proposals submitted by the Commission in May and July 2016. A progress report on this work, addressed to the Council (Justice and Home Affairs), will be presented at its meeting on 8-9 December.

For the recast of the Dublin Regulation, the Presidency has taken into account the sensitivity of the issue and, with the support of the European Commission, has sought to broaden consensus by presenting two non-papers elaborating on the concept of effective solidarity and outlining possible ways forward. From the Presidency's perspective, the starting point of the concept is that all Member States will contribute to share the burden of the migration crisis, within a predictable framework. It has been suggested that discussions should take place on the extent to which this contribution could be expressed in various forms, from relocation to financial and operational support, support for protection of our external borders, sharing reception capacities or playing a stronger role in return operations. Two rounds of extensive consultations have taken place in recent weeks, involving each Member State individually or in small groups, with the future Presidency participating since mid-November to conduct these consultations. Written and oral comments were received from Member States, which have been very valuable to the Presidency in developing its approach.

On that basis, the Presidency believes that a certain degree of convergence can be identified on some issues, while others have to be further refined and developed to generate the required support.

I. Areas of convergence

The reform of the Common European Asylum System goes hand-in-hand with a strong commitment from all Member States to take all measures necessary to secure the EU's external borders. This has been clearly underlined during the consultation process.

In this context, there is broad consensus that the current Dublin system is not ready to face substantial migratory pressures and that this has to be remedied. There is also broad consensus that the current Dublin system needs to be upgraded so that it can operate more efficiently in ordinary circumstances.

It should be possible for the reformed Common European Asylum System to cater for situations of low migratory pressure, where the upgraded Dublin rules apply, but also for the management of crises, in severe or even in extraordinary circumstances when high or exceptionally high numbers of arrivals put well-prepared asylum and migration systems under strain. In those circumstances, a wide range of solidarity measures should be deployed within a fair and predictable framework, including, if necessary, a complementary mechanism for the allocation of responsibility for examining asylum claims.

In its consultations, the Presidency has focused on how the EU should respond to situations of severe and extraordinary nature which place a significant burden on certain Member States. It is the Presidency's assessment that, in such situations, the Union needs to act collectively, making full use of all possible means of action and ensuring the participation of all Member States. No Member State should be put at a disadvantage merely on the basis of its geographical location. This is the essence of solidarity.

But it is also clear from the consultations that solidarity and responsibility go hand in hand. It is the responsibility of Member States to fully apply the comprehensive set of legal instruments in the area of border checks, asylum and return, including by devoting resources, both human and financial, to capacity-building at national level, on their own territory and for deployment on the territory of other Member States where migration flows so demand.

From the Presidency's consultations, it appears that a number of elements have to be considered as part of a wider, more effective definition of solidarity. The following were most often mentioned:

- increased mobilisation of Member States' resources under the auspices of EASO, EBCG and Europol;
- rapid deployment of the EBCG at the external border;
- full roll-out of hotspots' operations, including Migration Management Support Teams and Asylum Intervention Teams, ensuring proper security screening and registration;

- increased mobilisation of EU financial instruments, in particular emergency mechanisms, including for increasing reception capacity and other logistical support;
- reinforced means of ensuring efficient processing of asylum applications (reinforced joint processing) and joint return operations;
- increased engagement with third countries in order to:
 - strengthen border management, fight human smuggling and trafficking,
 - foster return and readmission,
 - ensure targeted information and communication, including through counter-narratives,
 - provide necessary financial assistance, including supporting improved livelihood of refugees and strengthening their asylum systems;
- a pre-established centralised crisis management structure at Union level and pre-defined operational coordination structure(s) in Member State(s). This structure should be responsible for the implementation and overall coordination of the activities on the ground;
- on the basis of a needs assessment, an operational plan covering all aspects of collective action;
- triggering a complementary mechanism for the allocation of responsibility for examining asylum claims and the distribution of migrants.

This list is neither exhaustive nor closed. It is the Presidency's understanding that it would be counter-productive to consider it to be a list of possible measures which Member States can opt in or out of. The notion of fairness has repeatedly been referred to during the consultations, with the implication that all Member States should take part in these measures, albeit to a varying degree.

On the basis of these consultations, the Presidency doubts whether a productive result can be achieved by attempting to establish, in a fair manner, quantitative equivalence between the various strands of action that are necessary to face a crisis.

Furthermore, there seems to be convergence on the fact that the future system needs to be based on a fair, predictable and workable framework, catering for different levels of intensity of crisis on the ground. Any such mechanism should include an efficient procedure for activating elements of collective response. Capabilities that have been ear-marked for emergency intervention should be made available in a foreseeable manner and should be maintained over time for possible deployment.

In order to deal with the different stages of emergency situations as they arise, precise planning must be carried out well in advance, including mid-term projections of the total emergency needs of the Union and a breakdown of what each Member State should be ready to provide at short notice. A structured system should provide for the coherent planning of national and EU means, including contributions from the Union's budget. This planning should be driven by a regular analysis of likely migratory pressures.

II. Areas for further consideration

In many instances during the consultations, it was emphasised that the areas of emerging consensus outlined above were conditional upon the further development of those ideas. The following list is not meant to be exhaustive and only serves as example of issues on which further work is needed.

- Which criteria, qualitative or quantitative or a combination of both, should be used to assess whether a situation calls for a collective response?
- Which procedure should be used to trigger the rapid deployment of these measures?
- What role should the different European institutions play at various stages, in particular the Commission as the structure responsible for enforcing and monitoring the application of agreed rules, and the Council as the regular decision-making institution deciding on the different phases and the elements needed? What should be the role of the European Council?

The Presidency considers that the most promising direction for seeking agreement is to consider a triggering mechanism based on multiple quantitative and qualitative criteria, which enables the Council and, in some instances, the European Council, to assess whether a situation objectively calls for triggering of pre-defined elements of a collective response.

- Should the solidarity mechanism be an integral part of the Dublin Regulation or a separate instrument?
- Should we consider relocation for persons unlikely to be given international protection?
- Which additional measures would be needed to prevent and reduce secondary movements (such as detention, where necessary and proportionate)?

