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from: Presidency
to: Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)
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Subject: A process for early warning, preparedness and management of asylum crises/
Suggestions from the Presidency and the incoming DK Presidency

Delegations will find in the annex to this note suggestions made by the Presidency and the incoming DK Presidency concerning the above subject.

A process for early warning, preparedness and management of asylum crises/

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1. CONTEXT

Completing the Common European Asylum System (CEAS) by 2012 remains one of the primary objectives of the EU institutions in the area of Justice and Home Affairs.

The negotiations on the recast of the Dublin Regulation have proved particularly challenging in respect of the proposed new article establishing an emergency mechanism for situations of particular pressure on Member States' asylum systems. For this reason, the Dublin Regulation has been one of the core topics of discussion at both the informal meeting of Ministers of the Interior in Sopot on 18 July and at the Justice and Home Affairs Council of 22 September.

Three main conclusions can be drawn from these discussions:

1. An overwhelming majority of delegations considered that the Union's asylum acquis should not include a system for the suspension of transfers carried out in the framework of the Dublin Regulation. The main concerns of the delegations related to the creation of an additional pull factor and the uneven level of implementation of the acquis throughout the EU;
2. delegations stated their interest in the development of the Union's early warning and preparedness capacity in respect of asylum crises. They requested additional information as to the way in which such proposals could be operationalised and emphasised the importance of operational cooperation in this respect; and
3. All delegations agreed that solidarity is a pivotal element in the CEAS and that solidarity and mutual trust go hand in hand. Genuine and practical solidarity should in no way turn into unconditional help for countries not showing the necessary will or effort to properly apply the acquis, thereby having *inter alia* accumulated a backlog of cases.

While a series of formal procedures are currently in place to follow up the transposition and implementation of the EU acquis into national legislation, there is no mechanism for evaluating the practical functioning of national asylum systems. Such a mechanism would serve to prevent deteriorations or collapses of asylum systems which could, in turn, destabilise the proper functioning of the Dublin system. Establishing such a mechanism would develop mutual trust among the Member States with respect to asylum policy.

During informal contacts between the European Parliament, the Presidency and the Commission on 13 September 2011 the will to work closely on these issues and the interest of the Parliament in such a process were underlined. This was confirmed at the LIBE Asylum Working Group on 21 September 2011.

The development of a continuously running, light and focussed evaluation system in the form of an *'early warning, and preparedness process'* is therefore being considered. The present note sets out a way in which, according to the Polish Presidency and the incoming Danish Presidency, such a system could be established. The model proposed is swift, based on risk analysis due to the need for rapid reaction in light of the constantly fluctuating mixed migration flows.

It should be pointed out that Member States are bound at all times by live up to their international obligations as was made clear e.g. in the ruling of 21 January 2011 by the European Court of Human Rights in its ruling in the case *M.S.S. vs. Belgium and Greece*. Further interpretation will also be provided by the ECJ in a few months. At the same time, the competences of the European Commission in respect of launching an infringement procedure if the Commission finds that a Member State has failed to fulfil its obligations under EU law (Article 258 TFEU) remains unaffected.

2. THE SHORT TERM SOLUTION – EARLY WARNING AND PREPAREDNESS WITHIN THE FRAMEWORK OF THE DUBLIN REGULATION

2.1. Objectives

In the short term it is necessary to:

- Ensure a sustainable Dublin system as a cornerstone of the CEAS;
- Enable rapid reaction by the Union in light of the constantly fluctuating mixed migration flows; and
- Unblock negotiations on the Dublin Regulation and move ahead in negotiations on the CEAS.

These objectives can be achieved by including the proposed early warning and preparedness system in the Dublin Regulation - its purpose is to detect weaknesses in the asylum administrations of Member States, notably those facing increasing mixed migration pressure. On this basis, the Union will be able to take the necessary measures to respond to serious deficiencies in the asylum systems of Member States. The ultimate goal is to ensure that the Dublin system remains fully operational at all times.

2.2. Content

The system would be a means of identifying and reacting swiftly to deficiencies in the asylum systems of the Member States revealed by large and fluctuating mixed migrations flows. Its function would be two-fold: first, on-going monitoring of all Member States to ensure their constant preparedness; second, a structured, sequential course of action to address deficiencies before they grow into a fully-fledged crisis, followed, if need be, by concerted crisis management. Should a crisis arise despite the steps taken, Member States need to take the appropriate steps to ensure that they do not violate their international obligations when making Dublin transfers to the affected Member State.

EASO would have a leading role, in conformity with its mandate, as regards to gathering and exchanging information, as well as in assessing the needs of Member States subject to particular pressure. In so far as the problems to be addressed may go beyond pure asylum issues, the Commission should coordinate the process, supported in particular by EASO.

2.2.1. From reporting and evaluation to consultations, action plans and crisis management

2.2.1.1. Asylum Management Reporting System

On a quarterly basis, the Member States should submit to the EASO and the Commission the following reliable core data relevant to their asylum management, much of which is already collected by Member States:

Organisation and management resources

- The stage of implementation of the different instruments of the asylum acquis;
- Resources, budget and personnel allocated to the asylum and return system; and
- Solidarity funds allocated to the asylum system of the Member State.

Statistics

- Inflow of asylum seekers (divided into top 10 nationalities and “others”);
- The change of inflow of asylum seekers compared to the previous quarter (divided into top 10 nationalities and “others”);
- The number of persons detected at the external border of the Member State who crossed illegally (divided into top 5 nationalities and “others”);
- The change of detections at the external border of the Member State compared to the previous quarter (divided into top 10 nationalities and “others”);
- Recognition rates (convention status and subsidiary protection) in first instance;
- Percentage of applications overturned during appeals;
- Number of persons relocated to and from other Member States;
- Number of Dublin transfers (persons) to the Member State in question;

- Change in Dublin transfers (persons) to the Member State in question compared to the previous quarter;
- Number of Dublin transfers (persons) from the Member State in question;
- Change in Dublin transfers (persons) from the Member State in question compared to the previous quarter;
- Number of persons accepted through a resettlement scheme
- Number of pending cases (persons) in first instance;
- Change in number of pending cases (persons) in first instance since last quarter;
- Number of pending cases (persons) in the appeals procedure;
- Change in number of pending cases (persons) in the appeals procedure since last quarter;
- Number of failed asylum seekers and illegal immigrants returned during the quarter (divided in forced and voluntary returns); and
- Number of failed asylum seekers and illegal immigrants waiting to be returned (divided in forced and voluntary returns).

EASO, in coordination with the Commission, will discuss with Member States to what extent the collection of this information is already taking place on the basis of Article 11 of the EASO Regulation. The aim is to avoid overlapping and burdensome reporting systems.

This information should be supplemented by the information from other EU Agencies, UNHCR and other reliable sources.

2.2.1.2. EASO and Commission involvement in follow up and possible preventive action plan

EASO in cooperation with the Commission will gather and exchange the information provided by the Member state and the other sources mentioned above and will consult the Member State in question should the information give cause for questions or concern. A reason for concern could be that no, limited or contradictory information is provided by the Member State in question or when particular pressures are at stake.

If, following such a consultation and after a possible on site visit to the Member State by the Commission and EASO, the Commission, on the basis of EASO 's assessment of the needs of the Member State in question, finds that there seem to be serious deficiencies in the asylum system of the Member State, the Commission in cooperation with EASO, within 2 months will submit to the Council its findings based on the information by the Member State. As the report would be prepared at an early stage before a crisis arises, it would not contain data that could be used to the detriment of Member States in the context of legal proceedings

The Commission will enter into a dialogue with the Member State with a view for the Member State to draw up a preventive action plan to remedy the identified deficiencies. Upon request from the Member State, EASO can assist in drawing up the action plan and implementing it in line with the EASO Regulation. Other Member States can be invited to assist – on a voluntary basis – in the drawing up of this action plan. This assistance could be based on their on-site visits.

The preventive action plan and reports on its implementation will be submitted by the Commission to the Council.

2.2.1.3. Consultation within the Council and political guidance

While the Member States in any case will be informed at all stages of the procedure, in particular through their participation in EASO activities, it is essential that they provide overall political guidance.

Once discussions have taken place between EASO, the Commission and the Member State concerned, the result of these discussions and the proposed preventive action plan should be brought to the attention of the Council.

This would ensure that Member States are fully informed of deficiencies in the asylum systems of the Member States and that matters of collective concern receive appropriate political attention at an early stage. Advance notice also allows Member States to consider the voluntary operational assistance they would be prepared to provide, for instance based on their own on-site visits and contribution to the drawing up of the preventive action plan.

The abovementioned involvement of other Member States could happen under the auspices of EASO.

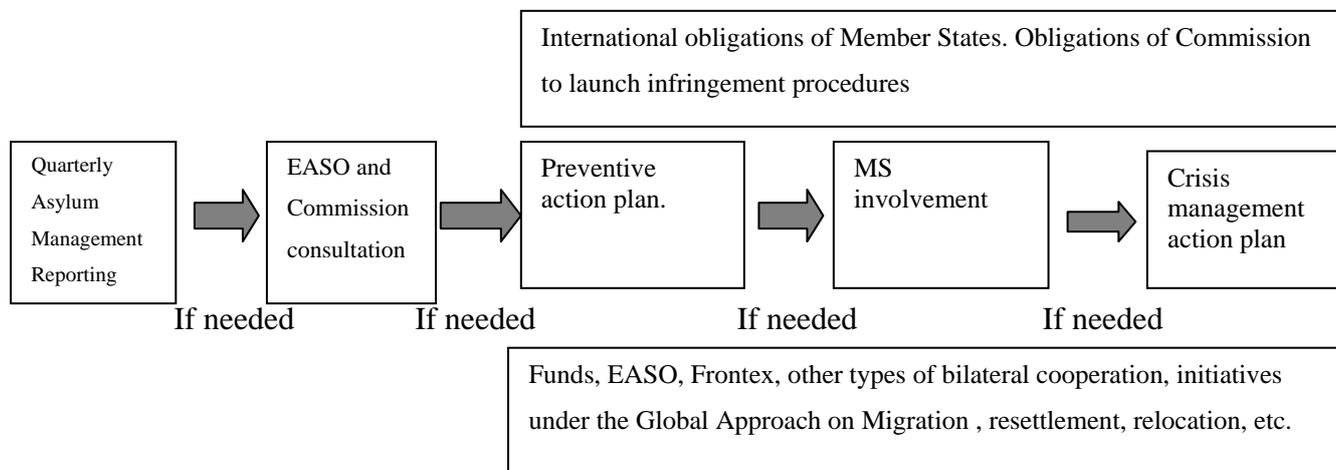
2.2.1.4. Crisis management action plan

Where the implementation of the preventive action plan does not yield progress in law and on the ground within a specific time period - 6 months might be considered - a crisis management mechanism can be put in place. This will be done by the Commission in cooperation with the Member State in question.

The mechanism will be tailor made in cooperation with the Member State in question. The mechanism will be implemented by the means of a crisis management action plan in a spirit of solidarity consisting of one of more of the following elements:

- Frontex support operations on border control and return (personnel, equipment, analytical support, capacity building assistance);
- EASO coordinated asylum support teams on subjects such as training, screening, backlog management, general management of asylum and reception facilities, expertise on vulnerable groups, etc.;
- Flexible Solidarity Funds and other possible types of EU funding;
- Increased cooperation with key countries of origin, first asylum and transit as part of the Global Migration Approach focusing *inter alia* on capacity building, return and readmission;
- Bilateral cooperation on asylum case management and return with other Member States and with key countries of origin, first asylum and transit;
- Strategic use of resettlement, i.e. using resettlement as a tool to ensure continued or increased protection space and self reliance options for refugees in first asylum or transit countries; and
- A voluntary reallocation system for small EU Member States under extreme pressure, modeled upon the Malta pilot project.

The crisis management action plan and reports on its implementation will be submitted to the Commission and the Council. The European Parliament should be informed at this stage.



3. THE LONG TERM SOLUTION

While, in the short term, the structure of the process should be set out in the Dublin regulation, the core of the Union's response, in the first instance, should be based on practical and operational cooperation and the work of EASO.

Once negotiations on the legal acts comprising the CEAS are brought to a successful conclusion the effectiveness of the short term solution set out in this paper should be assessed. Depending on the outcome of this assessment, it may be considered appropriate to develop a broader system of asylum evaluation.