



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 March 2012

7431/12

LIMITE

**JAI 156
ASIM 26**

NOTE

from: the Belgian, the French, the German, The Netherlands, the Austrian, the Swedish
and the UK delegations

Subject: Common responses to current challenges by Member States most affected by
secondary mixed migration flows

Delegations will find in the annex a contribution from the aforementioned delegations to the draft Road map to ensure coherent EU response to continued migratory pressures (as set out in doc. 7262/12).

Common responses to current challenges of secondary mixed migration flows

- **Contribution of the Austrian, Belgian, French, German, The Netherlands, Swedish and the United Kingdom delegations to the**

“Roadmap to ensure coherent EU response to continued migration pressures”

(Doc 7262/12 MIGR 25)

The Ministers responsible for migration of Austria, Belgium, France, Germany, The Netherlands, Sweden and the United Kingdom, with the Danish EU Presidency as observer, met in Brussels on 7 March 2012 to agree on measures regarding matters of mutual interest in the field of preventing illegal immigration with a special focus on secondary migration movements.

One of the major achievements of the EU is the freedom of movement and the guarantee of security within the Schengen system, based on mutual trust between Member States. Insufficient management of external borders and lack of compliance with the existing acquis are a serious threat both to the Schengen system and to the confidence of European citizens in management of migration at national and EU levels. It is therefore of utmost importance that in the spirit of solidarity, all EU Member States live up to their responsibilities by ensuring a functioning management of the external borders in line with the Schengen acquis, as well as a functioning national asylum system in order to guarantee this area of freedom, security and justice in the long run. In this perspective, it is of the utmost importance that the authorities in Member States that are responsible for the execution of legislation under the Schengen acquis are not vulnerable to elements that undermine the rule of law.

The European Union and its Member States are confronted with major challenges in the field of asylum and migration. The creation of a Common European Asylum System and a common framework for genuine and practical solidarity, effective action against illegal immigration and the strengthening of the Schengen area, as well as a renewed external migration policy framework under the Global Approach are currently among the priority issues on the European agenda. In this context, secondary migration flows, following illegal entry in the EU, represent a particular challenge.

Secondary migration led to France, Germany, Sweden, United Kingdom, Belgium, The Netherlands and Austria being the top EU destinations of asylum seekers for several years. Analyses have shown that a very large number of irregular migrants enter the European Union crossing southern and south-eastern borders by land or sea (in particular those between Greece and Turkey) and continuing onwards within the Schengen area using two main routes to the above mentioned top destination countries. A growing number of migrants are using intra-Schengen flights to continue to preferred countries of destination, after illegal entry to the EU or claiming asylum in another Member State.

A very high number of irregular migrants are currently staying in Greece and, most likely, want to move on to other destination countries. Moreover, according to Frontex, there is a high probability of the Greek-Turkish land border, in particular, remaining the most vulnerable EU external land border section for illegal immigration in the short to medium term.

Given the fact that not all Member States have fully transposed the existing acquis in migration and asylum matters, that some Member States have to bear a greater burden than others, and that some Member States' asylum and migration systems are significantly under-developed and unable to meet the pressures on them, the common goals of preventing and combating illegal immigration whilst protecting people in need of protection are difficult to achieve.

The present Ministers believe that “keeping one’s house in order” is a fundamental basis with regard to solidarity and mutual trust within the EU. Genuine solidarity on a practical level among all EU Member States must be built on this fundamental basis if we are to achieve our common goals.

Against this background, the Ministers present suggest to give priority to the following measures within the framework of the “Roadmap to ensure a coherent EU response to increased migration pressure” to be drawn up by the Danish Presidency as agreed during the JHA Council in December 2011:

- **further action to ensure a correct application of the agreed acquis at the EU-borders and to mitigate the immediate pressures on them, in particular at the Greek-Turkish border with a stronger implementation and monitoring of the Greece Schengen and asylum action plans as well as a more efficient cooperation with Turkey on those issues.**

- **strengthen the Schengen governance by a political agreement on the legislative package by June 2012 with regard to**
 - **strengthening the Schengen evaluation and monitoring mechanism,**

 - **establishing a safeguard clause for truly critical situations where a Member State is no longer able to comply with its obligations under the Schengen rules and respond to exceptional circumstances,**

 - **retaining the possibility for Member States to reintroduce internal border controls in line with the current system in the Schengen Borders Code.**

- **combating the misuse of legal migration channels as a result of visa liberalisation by continued monitoring of the effects of post visa liberalisation process and timely establishment of a suspension clause in the Visa Regulation by June 2012 as well as avoiding incentives for abuse of Member States' asylum systems;**
- **ensuring the EU's ability to return persons lacking a right to stay;**
- **additional measures within the EU to protect free movement rights from fraudulent and abusive actions which undermine their integrity and challenge EU immigration controls;**
- **concerted engagement beyond the external borders of the EU, including practical cooperation with countries of origin and transit, with a view to improve third countries' infrastructure and capacity to manage and control migration. Such cooperation with main countries of origin and transit should be based on genuine partnership and linked to their commitment to prevent and combat illegal immigration. This cooperation should be founded on a performance-based approach and on appropriate conditions.**

The Ministers suggest the following specific actions to respond to the challenge of illegal immigration:

➤ ***Preventing illegal immigration across the Greek-Turkish border***

Figures provided by Frontex indicate that a total of 55 000 irregular migrants crossed the Greek-Turkish land border in 2011, representing a 17% increase on 2010. The Ministers are of the opinion that these figures are a serious cause of concern and therefore call for a consistent and coherent implementation of measures intended to address this phenomenon. It is central that measures related to mixed migration flows are built on our international obligations in the area and that people in need of international protection have access to the correct procedures.

The Council Conclusions on the Schengen evaluation of Greece of December 2011 state that there are still serious shortcomings which have to be corrected in order to have Greece perform border checks in a satisfactory manner. Ministers strongly urge the Greek authorities to undertake all necessary action to comply with the existing acquis, namely to ensure adequate border controls as well as establishing a functioning asylum system.

Addressing pressure at the Greek-Turkey border will also require greater EU engagement with Turkey. More generally, and due in part to its geographical location, Turkey should be a key partner for the EU in general and in particular in the field of Justice and Home Affairs. The Ministers reconfirm, as stated in the Stockholm Programme (and agreed with Turkey), that the EU and Turkey should work to intensify their cooperation in order to meet the common challenge of managing migration flows and, in particular, to tackle illegal immigration and cooperate on returns.

Measures proposed

- Increase and improve the EU's partnership with Turkey on JHA issues, including practical cooperation with Turkey in this area. This cooperation should focus on joint responsibility, solidarity, cooperation with all Member States and common understanding. It should encompass a range of JHA issues, such as cooperation in the area of migration and border management (including the signing and effective implementation of the EU readmission agreement with Turkey), the fight against terrorism as well as cross-border organised crime (including human trafficking and drug trafficking). The Commission is invited to set out a broad approach to this enhanced partnership with Turkey, taking into account also security related issues. Visa related issues should be one element of such a comprehensive package.

This approach could be discussed and implemented in the framework of regular ministerial and senior level meetings, following the example of those carried out with other key third countries.

- Swift conclusion of negotiations of a working arrangement between Turkey and Frontex, aiming at an intensified cooperation in border management and combating illegal immigration flows. After signing it will be essential that sufficient resources are invested in activities that may result from the working arrangement.
- Taking into account the findings of the 2005 and 2010 Schengen evaluation reports that still need to be implemented a re-visit should be organised in order to obtain an updated common understanding of the situation at the Greek-Turkish border in due time.
- Intensified monitoring of the implementation of the National Action Plan “Greece Schengen” in order to regularly assess the progress achieved as well as the remaining shortcomings. Frontex should assist in this monitoring, and give its full support to the Greek authorities, for example in elaborating work plans in their capacity building at their external borders.
- Pending the final decision based on the evaluation of the Frontex Operational Office Piraeus, revision of its mandate in order to focus mainly on capacity building support measures in Greece.
- Intensified support for Frontex’ Joint Operations such as Poseidon through increased contributions by Member States. Operation Poseidon must be at the required operational strength before the period June – November when illegal border crossings reach their highest level.
- Reiterating the responsibility of Member States for the protection of their own borders, Greece should deploy the necessary number of police officers and equipment, especially in the Evros region.

- Enhancing the operational cooperation and direct contacts between the police and border guard authorities of Greece and Turkey is a necessity to combat illegal immigration and trans-border crime.
- The swift start-up of the Greek National Asylum Office, with the necessary equipment and number of personnel. Special focus should be put at the registration and processing of asylum claims and the improvement and increase of reception and detention capacities, in order for Greece to comply with the EU acquis.
- Intensified monitoring of the implementation of the Greek National Action Plan on Asylum in order to regularly assess the progress achieved as well as the remaining shortcomings. EASO should assist in this monitoring, and give its full support to the Greek authorities.
- Obtaining a more accurate picture of secondary migration flows within the EU by identifying the main routes and hot spots of illegal immigration and organising targeted actions to combat these in line with EU Policy Cycle, i.e. through Tailored Risk Assessment (TRA) by Frontex and Europol on illegal immigration.

➤ *Strengthening of Schengen governance*

Freedom of movement and security in the Schengen area can only be guaranteed if the EU succeeds in securing a well-functioning Integrated Border Management system in line with Schengen acquis.

Measures proposed

- Finalisation by the end of June 2012 of the negotiations on a strengthened Schengen evaluation and monitoring mechanism.
- Furthermore a safeguard clause should be introduced allowing for the temporary introduction of internal border controls as a measure of last resort where a Member State is not complying with its obligations under the Schengen rules.
- Respect national sovereignty to decide to reintroduce event-triggered border checks at their internal borders when there is a serious threat to public policy or internal security. The Member States have the political responsibility for maintaining public order and protecting internal security, without excluding improvements in the monitoring.
- Adoption of guidelines to organise the political governance of the Schengen area and allow the Mixed Committee at ministerial level to act as a political steering committee.

➤ *Combating the abuse of legal migration channels as a result of visa liberalisation and avoiding incentives for abuse of Member States' asylum systems*

The introduction of a visa free regime for the Western Balkan countries in 2009 and 2010 led to a significant increase in asylum applications by nationals of some of these countries in several EU Member States, including Belgium, Germany, the UK and Sweden. These asylum applications proved to be manifestly unfounded in the vast majority of cases, putting an increased pressure on the asylum systems of affected EU Member States, with substantial financial implications.

Measures on awareness raising efforts in Western Balkan countries and negotiations with their authorities have not sufficiently addressed this issue and the situation remains critical. The Ministers therefore strongly urge the Commission to take this experience into consideration in future negotiations of visa liberalisation agreements with third countries.

Measures proposed

- Conclusion by June 2012 of negotiations regarding the inclusion of the suspension clause in the Visa Regulation.
- A clear determination and careful examination of the conditions to be effectively fulfilled by third countries in the process leading to a visa free regime with the EU. Visa liberalisation processes should take into account all aspects of migration and security risks. New processes like the one with Kosovo need to be gradual and involve the Council at each step.
- Continued monitoring through Frontex within the framework of the post visa liberalisation monitoring mechanism once the facilitation/liberalisation regime has entered into force.
- Shortening the duration of asylum procedures to avoid incentives for abuse of Member States' asylum systems.
- Avoid delays in asylum procedures, additional administrative burdens and high costs when establishing a Common European Asylum System, since a big influx of asylum seekers often leads to overburdened reception systems and ever complex asylum procedures in some Member States.
- Where applicable and with due regard to necessary procedural guarantees accelerated procedures are needed to keep the national asylum systems effective.

➤ *Protection of free movement rights from fraudulent and abusive actions*

According to reports received by Frontex from some Member States, certain forms of abuse seem to have increased. The Ministers are concerned about increasing evidence of fraudulent acquisition and use of free movement rights, in particular abuse of rights by third country nationals. Free movement rights should be considered within the broader context of illegal immigration that starts in third countries and is encountered at the external border and within the EU. Third country nationals seeking to gain access to the EU may enter into marriages of convenience and, once in the EU, exploit insecure documentation and issuing processes to gain access to free movement rights. Concerns were also raised about the links between organised criminal groups involved in facilitating this abuse and other criminal activity. Such abuse undermines the rights of all EU citizens and the integrity of free movement, challenges the effectiveness of EU immigration systems and creates financial burdens for Member States. Ministers are committed to looking at evidence from across the EU to improve understanding of the type and scale of abuse and to direct the action required to tackle it.

Measures proposed

- Improve understanding of abuse of free movement rights experienced by Member States through agreement of relevant EU agencies (Europol and Frontex) to gather and analyse information. This would assist in the identification of desired EU actions to tackle abuse, such as Joint Investigation Teams to target specific, intelligence-led threats, and support existing work to tackle human trafficking and the role of organised criminal gangs in facilitating illegal entry into the EU.
- Improve the dissemination of best practices between Member States to deter the abuse of free movement rights.

- Enhance the powers and tools available to Member States to tackle marriages of convenience by preparing a handbook on marriages of convenience and introducing single points of contact in Member States for queries in individual cases.
- Ensure that travel documents used within the EU, including their issuance and validation, meet minimum security standards, preventing their use for illegal immigration or criminal purposes. ID and residence cards should be a particular focus.
- Call on the Member States to make efficient use of passenger data for the improvement of border controls and combating illegal immigration. In this regard considerations should be given on a common EU approach towards Advances Passenger Information.

➤ *Practical cooperation with countries of origin and transit within the framework of the Global Approach to Migration and Mobility*

Countries of origin and transit should be the strategic focus of the EU's external migration policy in line with the Global Approach to Migration and Mobility, which offers significant opportunities for comprehensive measures also when it comes to prevent and combat illegal immigration. These measures should include capacity building, the strengthening of borders and conclusion and effective implementation of readmission agreements. A strategic and pragmatic approach is needed to respond to increasing and changing migration trends. The strengthening of countries of origin and transit in their ability to manage migration, including mixed flows, is vital. The method of the Global Approach to Migration and Mobility offers significant opportunities to address these issues in a broad and balanced way.

Measures proposed

- Full and swift operationalisation of the “Council Conclusions defining the EU strategy on readmission” of June 2011.
- Conclusion and effective implementation of EU readmission agreements with strategic countries of origin and transit where assessment suggests an added value for EU Member States. Readmission could be incorporated into the broader and coherent cooperation with third countries, including offering tailor-made incentives. If a third country persistently fails to cooperate, consideration should be given to applying conditions.
- Readmission agreements should in principle comprise clauses on third country nationals and stateless persons, transit and accelerated procedures.
- Increased effort (“diplomatic pressure”) by the EEAS, the Commission and Member States on third countries with whom the EU has concluded readmission agreements that are not being implemented properly.
- Ensuring that the renewed Global Approach maintains a strategic focus on key countries of origin and transit, both in the EU neighbourhood and beyond, including practical action by the EU to support capacity building on the management of migratory flows and strengthening of borders in these third countries.
- Putting into practice the role of SCIFA and HLWG in ensuring a coherent, strategic approach to internal and external policy on migration and asylum, in line with the Strategic Committee’s and High Level Working group’s mandates.