Informal Meeting of COSI
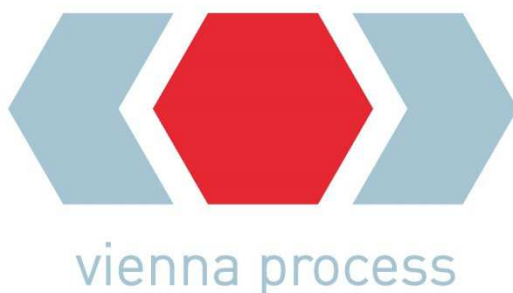Vienna, Austria
2-3 July 2018

Strengthening EU External Border Protection and a Crisis-Resistant EU Asylum System

vienna process

1.Starting Situation

The migration crisis of 2015 and its consequences left many people with the impression that political elites and the EU as a whole have lost control of the situation. This negatively impacted both people's confidence in security as well as security as such in EU Member States. It also dramatically highlighted the limits of the current "Common European Asylum System" (CEAS) and opened our eyes to the fundamental weaknesses in the protection of the EU's external borders. The associated challenges also make it clear that asylum and external border protection cannot be considered as being separate from one another, and that it is only possible to guarantee both if they are dealt with together. Only by combining sound external border protection with an effective common asylum policy will it be possible to prevent illegal migration while granting protection to those in most urgent need of it.

Despite progress achieved in strengthening EU external border protection by further developing Frontex into the European Border and Coast Guard (EBCG) and despite intensive efforts aimed at reforming the CEAS, fundamental challenges and weaknesses remain. In addition, it is to be expected that pressure on the EU's external borders will increase in the years to come due to a variety of factors. Overall, this may fundamentally jeopardise our internal security and permanently challenge the functioning of Schengen.

Against this background, more and more Member States are open to exploring a new approach. Under the working title "Future European Protection System" (FEPS) and based on an Austrian initiative, a complete paradigm shift in EU asylum policy has been under consideration at senior officials' level for some time now. The findings are considered in the "Vienna Process" in the context of which the topic of external border protection is also dealt with. A number of EU Member States, the EU Commission and external experts contribute towards further reflections and deliberations on these two important topics.

When assessing the current situation in more detail, the following factors require particular attention:

▪ Although migration pressure has decreased compared with 2015 and 2016, the Union continues to be confronted with irregular migration movements on various routes. The relevant figures have always exceeded pre-2015 levels.

▪ What is more, we are again witnessing worrying increases in illegal migration, for instance along the route from Turkey to Greece or along what is known as the "coastal route" across the Balkans.

▪ Such trends can quickly escalate, not least because it is still possible to come to the EU via criminal people smugglers who are still shamelessly exploiting people.

▪ Innumerable people therefore continue to lose their lives on dangerous transcontinental journeys.

▪ All this is also happening because, ultimately, there is no effective EU external border protection in place against illegal migration and the existing EU asylum system does not enable an early distinction between those who are in need of protection and those who are not.

- In this context, it is evident that cooperation by third countries is key to success. Several positive steps have been taken regarding different routes that now need to be further developed.

- Disembarkment following rescue at sea as a rule only takes place in EU Member States. This means that apprehensions at sea not only remain ineffective (non-refoulement, examination of applications for asylum), but are exploited in people smugglers' business models.

- Under current conditions, it is not primarily those most in need of protection who come to Europe, but rather mainly people who can afford to use criminal people smugglers and who feel strong enough to embark on dangerous journeys.

- More often than not, they cross several safe states in order to reach the desired target country, risking not only their belongings but also their own and often their families' lives. This is indeed not what has been intended by the Geneva Convention, namely to provide quick and reliable help to people in need.

- This translates into special challenges for countries of initial reception at the EU's external borders and especially also for EU countries that are portrayed by people smugglers as highly worthwhile target destinations.

- As a result of secondary migration movements, the impact may ultimately be felt across the entire Schengen area. Under current regulations it is, in fact, generally not possible to restrict people's freedom of movement in the first stage of the procedure from the time an individual has applied for asylum through to registration, security check and admissibility assessment. This leads to absconding and onward travel, frequently using various false identities.

- Furthermore, it is often not possible to transfer individuals whose application for asylum was rejected out of the country due to lack of cooperation by third countries – which further undermines the current EU asylum system.

- Therefore smuggled individuals who have made it there – often after having covered thousands of kilometres – mostly remain in Europe, regardless of whether they are in need of protection or not.

- Due to factors related to their background as well as their poor perspectives, they repeatedly have considerable problems with living in free societies or even reject them. Among them are a large number of barely or poorly educated young men who have travelled to Europe alone. Many of these are particularly susceptible to ideologies that are hostile to freedom and/or are prone to turning to crime.

- As a result of the prevailing weaknesses in the fields of external border protection and asylum, it is to be expected that the negative consequences of past and current policies will continue to be felt for many years to come. As experience with immigration from regions that are characterised by patriarchal, anti-freedom and/or backward-looking religious attitudes has shown, problems related to integration, safety and security may even increase significantly over several generations.

- Such longer term effects can, for instance, be observed in the field of foreign workers' programmes, irrespective of the fact that the first generation was immediately in employment. In contrast to these, the majority of migrants coming irregularly to Europe now are unemployed from the very beginning.

- What is more, the prevailing weaknesses in the fields of external border protection and asylum are exploited by extremists and terrorists. On the one hand by those who come to Europe in mixed migration flows, and on the other hand by those who already live in Europe and approach arriving migrants.

- The weakening of terrorist organisations in third countries is likely to trigger an increase in the number of returning foreign terrorist fighters. This makes properly functioning EU external border protection all the more necessary.

- Another reason for the urgently required effective external border protection is the likelihood of a further aggravation of problems in the EU's neighbourhood as a result of an escalation in conflicts, poverty, unemployment, lack of perspectives, climate change or quickly growing demographics such as in Africa.

- Consequently, the Union's internal security could be affected to a much greater extent by external threats than is currently the case, for instance as a result of renewed mass migration, transnational crime or extremism and terrorism.

- In the event of further migration crises, which are unfortunately to be expected, the distribution of smuggled migrants across EU Member States could lead to further destabilisation of the situation.

- Against this background, it has been impossible to achieve a viable and sustainable compromise on this issue for many years now – despite intensive efforts thus been impossible in the ongoing CEAS negotiations.

- Those Member States who point to the fundamental problems associated with the existing EU asylum system, may quite unlikely be convinced by new calculation methods when it comes to the question of distribution or regarding deadlines for allocating responsibility for persons seeking protection.

- It could, however, be possible to restore confidence in the EU's ability to act on asylum, if the focus was first of all directed towards fighting smuggler-driven illegal migration, achieving effective EU external border protection as well as the necessary pro-active, broad-based cooperation with third countries.

- This also seems realistic, as these objectives – in contrast to the distribution of smuggled migrants – are in principle supported by all EU Member States.

- On that basis, it could be possible to develop a pro-active, effective and crisis-resistant common EU asylum and migration policy, which might at the same time act as a driving force for a modern international asylum and migration system. Although migration pressure has decreased compared with 2015 and 2016, the Union continues to be confronted with irregular migration movements on various routes. The relevant figures have always exceeded pre-2015 levels.

- What is more, we are again witnessing worrying increases in illegal migration, for instance along the route from Turkey to Greece or along what is known as the "coastal route" across the Balkans.

- Such trends can quickly escalate, not least because it is still possible to come to the EU via criminal people smugglers who are still shamelessly exploiting people.

- Innumerable people therefore continue to lose their lives on dangerous transcontinental journeys.

- All this is also happening because, ultimately, there is no effective EU external border protection in place against illegal migration and the existing EU asylum system does not enable an early distinction between those who are in need of protection and those who are not.

- In this context, lack of cooperation by relevant third countries in dealing with illegal migration plays an important role.

- Disembarkment following rescue at sea as a rule only takes place in EU Member States. This means that apprehensions at sea not only remain ineffective (non-refoulement, examination of applications for asylum), but are indeed deliberately exploited as a tactic by people smugglers.

- Under current conditions, it is thus not primarily those most in need of protection who come to Europe, but rather mainly people who can afford to use criminal people smugglers and who feel strong enough to embark on dangerous journeys.

- More often than not, they cross several safe states in order to reach the desired target country, risking not only their belongings but also their very lives. This is indeed not what has been intended by international refugee protection, namely to provide quick and reliable help to people in need.

- This translates into special challenges for countries of initial reception at the EU's external borders and especially also for EU countries that are portrayed by people smugglers as highly worthwhile target destinations.

- As a result of secondary migration movements, the impact may ultimately be felt across the entire Schengen area. Under current regulations it is, in fact, generally not possible to restrict people's freedom of movement in the first stage of the procedure from the time an individual has applied for asylum through to registration, security check and admissibility assessment. This leads to absconding and onward travel, frequently using various false identities.

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need of protection or not.

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- As a result of the prevailing weaknesses in the fields of external border protection and asylum, it is to be expected that the negative consequences of past and current policies will continue to be felt for many years to come. As experience with immigration from regions that are characterised by patriarchal, anti-freedom and/or backward-looking religious attitudes has shown, problems related to integration, safety and security may even increase significantly over several generations.

- Such longer term effects can, for instance, be observed in the field of foreign workers' programmes, irrespective of the fact that the first generation was immediately in employment. In contrast to these, the majority of migrants coming to Europe now are unemployed from the very beginning.

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- Another reason for the urgently required effective external border protection is the likelihood of a further aggravation of problems in the EU's neighbourhood as a result of an escalation in conflicts, poverty, unemployment, lack of perspectives, climate change or quickly growing demographics such as in Africa, for instance.

- Consequently, the Union's internal security could be affected to a much greater extent by external threats than is currently the case, for instance as a result of renewed mass migration, transnational crime or extremism and terrorism.

- In the event of further migration crises, which are unfortunately to be expected, the distribution of smuggled migrants across EU Member States could lead to further destabilisation of the situation.

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- On that basis, it could be possible to develop a pro-active, effective and crisis-resistant common EU asylum and migration policy, which might at the same time act as a driving force for a modern international asylum and migration system.

A further, clear strengthening of EU external border protection in cooperation with third countries, including particularly in the field of readmission therefore seems indispensable for a citizen-focused, crisis-resistant and future-oriented sustainable EU security union. This has to go hand in hand with the necessary development of a crisis-resistant EU asylum system supported by all Member States and the relevant EU agencies. A system that actually serves people in need of protection and does not overburden receiving countries, neither in terms of resources nor with regard to the fundamental rights and freedoms they uphold.

2. Possible Goals

The following fundamental objectives could be pursued:

- A halt to illegal migration to Europe.

- The decision on who crosses the EU's external border is no longer in the hands of people smugglers and criminal networks but lies with the Union and its Member States.

- Development of a new, better protection system under which no applications for asylum are filed on EU territory – with the exception of nationals of states directly bordering the EU or if there are no opportunities for protection between the EU and the individual's country of origin, a system that focuses on particularly vulnerable persons and not on those who can afford criminal people smugglers and feel strong enough for dangerous journeys.

- Priority is to be given to protection as close as possible to crisis regions, i.e. mainly in countries of initial reception, as it is possible to help more people locally using the same resources and, furthermore, fewer problems related to different ways of life and values are to be expected. (Quick help means smart and effective help.)

- In the event of a negative asylum decision, the person in question is to leave the EU and shall be transferred either to his/her country of origin or – which is to be examined – a Return Centre in a third country. This will make an essential contribution towards countering criminal people smuggling.

2.1. By 2020

By 2020 the following goals could be defined:

- Saving as many human lives as possible;

- Clear strengthening of the legal framework and the operational capabilities of FRONTEX with respect to its two main tasks: support in protecting the Union's external border and in the field of return;

- Increasing countering and destruction of people smugglers' and human traffickers' business models;

- Significant reduction in illegal migration;

- More sustainable and more effective return measures as well as establishment of instruments that foster third countries' willingness to cooperate on all relevant aspects, including the fight against people smuggling, providing protection and readmission;

- Development of a holistic concept for a forward-looking migration policy (in the spirit of a „whole of government approach") and a future European protection system in cooperation with third countries that is supported by all and does not overburden all those involved – neither in terms of resources nor with regard to the fundamental rights and freedoms they uphold.

2.2. By 2025

By 2025 the following goals could be realised:

- Full control of the EU's external borders and their comprehensive protection have been ensured.

- The new, better European protection system has been implemented across the EU in cooperation with third countries; important goals could include:

  - no incentives anymore to get into boats, thus putting an end to smuggled persons dying in the Mediterranean;
  - smart help and assistance for those in real need of protection, i.e. provided primarily in the respective region;
  - asylum in Europe is granted only to those who respect European values and the fundamental rights and freedoms upheld in the EU;
  - no overburdening of the EU Member States' capabilities;
  - lower long-term costs;
  - prevention of secondary migration.
- Based on these principles, the EU Member States have returned to a consensual

European border protection and asylum policy.

3. Options

- Developing effective and seamless EU external border protection as a pre-condition for a functioning common EU asylum and migration system; ensuring the effectiveness of external border protection by putting a stop to absconding during the admissibility assessment phase of an application for asylum (expansion of the border procedures under Art. 43 of the Procedural Directive) at the EU's external borders/hotspots;

- Implementing and further developing Integrated Border Management (IBM) including the European Border Surveillance system (EUROSUR) into a fully-functional autonomous border surveillance system;

- Gradually equipping the European Border and Coast Guard with operational resources of its own (human and technical) as well as optimal use in the interplay between agency and Member States;

- Making it easier for Frontex to cooperate with third countries, including not only EU neighbours, also with respect to support in the field of return;

- Repealing EU Regulation 656/2014, which makes it impossible for Frontex to disembark migrants rescued at sea in safe third countries;

- Expanding the Frontex weakness analysis to also include organised crime, terrorism and other security-relevant issues at the external border;

- Submission of a White Paper prepared jointly by the European Commission, EU agencies and Member States, specifying measures and deadlines for guaranteeing crisis-resistant EU border management, including the seamless protection of the EU's external borders;

- Integrated EU-wide and European-wide collaboration with respect to related cooperation with third countries and in the field of return;

- Development and standardised Union-wide application of the border procedure under Article 43 of the Procedural Directive; stop and detention at the external borders/transit zones until full registration, including collection of biometric data and a security check (in analogy with the ETIAS procedure) has been completed; followed directly by custody pending deportation and transfer across the border when the application for asylum is not admissible;

- EU-wide harmonisation of return decisions (maybe based on an EU return regulation), which should lead to a return title enforceable by all EU Member States and put an end to multiple asylum procedures involving one and the same individual in several Member States; it should also be possible for Frontex to enforce such decisions;

- Granting priority to protection in the region of origin, especially in countries of initial reception, and to enhancing protection standards locally, particularly by way of registration, identification and the development of adequate protection systems;

- Improving people's living conditions in the regions of origin by providing support regarding the provision of accommodation, health and education opportunities and the development of working opportunities/the establishment of economic zones;

- Concluding comprehensive agreements with third countries (compacts against irregular migration and for security, resilience and positive development), in order to promote, for instance, strengthen border controls and exit checks by transit countries or disembarkment in third countries following rescue at sea;

- Strengthening of and investment in protection facilities and living conditions in transit countries, placing the focus on registration, identification and the development of adequate protection systems;

- Provision of effective return counseling on all transit routes to Europe, taking into consideration the experience gained through existing IOM centres;

- Examination of opportunities for the establishment of return centres in third countries for persons who do not reside legally on Union territory;

- Supporting third countries in searching for and rescuing migrants, in establishing Search and Rescue Centres, in caring for and counselling those who have been rescued and/or in returning them to their countries of origin and/or transit; the existing cooperation approaches in this field are to be expanded and relevant pilot projects for new forms of cooperation should be developed;

- Defining capacity limits with respect to the integration of third country nationals into European societies by taking account of social peace, social cohesion and European values;

- Enhanced resettlement efforts, if and/or insofar as illegal migration flows have been stopped in order to enable those who really need protection to get to the EU via legal and safe routes.

Topics for discussion:

- What is your view on the challenges outlined above?

- What are the most important goals to be reached by 2020/2025?

- What options should be pursued as a priority?