

Non-paper on the reform of the Common European Asylum System in the perspective of an EU migration and asylum policy

In the last five years, Member States of first entry have borne the largely disproportionate burden of migratory movements heading towards the EU on an unprecedented scale. This has put their borders, asylum and reception capacities under severe strain. It also made blatantly evident how the instruments underpinning the EU asylum and migration system are outdated; the Dublin system was established to face the phenomenon of the so-called “refugees in orbit”, but was not conceived to function in a context of mass migration nor as to manage sustaining disproportionate pressures. In the same context, the SAR rules were not conceived as an instrument to face migration flows. This paper is submitted at a critical moment with the EU facing extreme pressure at its eastern borders. The recent events demonstrate the disproportionate pressure exercised on the frontline Member States, especially the ones with extensive maritime borders, thus the need for a shared and sustainable solution.

After the peak in arrivals registered in 2018, Spain has experienced decreasing numbers in 2019 in comparison to the previous year, despite current high pressure not only in the Mediterranean but also in the Atlantic façade. Similarly, despite reduced irregular arrivals in 2019 compared to the previous years, Italy continues to be under high pressure in the central Mediterranean. In both cases, decreasing figures are registered thanks mostly to their strong and sustained efforts to consolidate a privileged relationship, supported by the EU, with the South Mediterranean partners, so that we achieved momentarily tangible results in the fight against irregular flows and the orderly management of migration across the Mediterranean for the benefit of all Member States.

Nonetheless, a “back to normality” rhetoric would be highly risky for the EU, as well as misleading. Cyprus, Greece and Malta continue to experience intense and disproportionate pressure. Malta has experienced a record number of arrivals in 2019 and the first two months of 2020. Similarly, Greece being the Member State with the highest numbers of arrivals among all Member States, is registering during the last months of 2019 and the beginning of 2020 a rise of more than 50% compared to the previous year. Moreover, currently Greece is facing an unprecedented and ongoing crisis at its borders. At the same time, the situation in the countries of origin and transit remains extremely fragile. In this context, we need to secure the full and sustained implementation of the EU-Turkey Statement of 18 March 2016 while stepping up our engagement with the South Mediterranean counterparts.

The large-scale phenomena at the source of the increase in migration of last years are there to stay. While Cyprus, Greece, Italy, Malta and Spain share an approach to migration management that is, primarily, preventive – i.e., based on cooperation with countries of origin and transit – we believe that we still need an overhaul of the way the EU manages incoming flows and, above all, asylum requests. We need an authentic migration governance at European level, capable of implementing the ambitious objectives already stated in the Treaties. We need to set up a more efficient and predictable system able to manage both ordinary and mass migratory flows, that is resilient to a potential increase in the number of arrivals, and not primarily focused on secondary movements. Having achieved to raise awareness at European level on the need to manage migration, we must now aim for a fair sharing of responsibility as stated in Article 80 TFEU.

This should start from a fair and sustainable reform of the Common European Asylum System (CEAS). The principle of responsibility of the Member State of first entry – a central pillar of the current CEAS – not only is unfair: It simply does not work, and should thus be overcome. Cyprus, Greece, Italy, Malta and Spain support a reform of the CEAS that sets aside this principle.

It is necessary to set up a mandatory system providing for a fair and rapid distribution of asylum seekers arriving irregularly to the EU among Member States, in compliance with Articles 78 and 80 TFEU.

Distribution criteria should include links that exist between an asylum seeker and a Member State (e.g. enhanced family reunification, previous residence/visa, previous issue of academic or professional diplomas), as requested by the European Parliament, with a view to minimizing the incentives for secondary movements.

Then, a complementary distribution mechanism based on an automated central system (DAS) should be established to manage the remaining cases where the criteria cannot be applied. The DAS would function by comparing registration data on asylum applications with a fair share for each MS calculated on objective and predefined criteria, including GDP, GDP per capita, population and territory and accordingly allocating applicants in a random way.

The mechanism would not apply to asylum seekers who pose a danger to security and public order. In this case, the responsibility will remain with the first MS in which the applicant entered irregularly or was apprehended in irregular position.

This complementary mechanism would feature:

- Distribution under any circumstances, even without an ongoing crisis;
- No triggering threshold needed and swift and simple burden sharing;
- Early distribution within short time-limits to avoid disproportionate pressure on a few Member States;
- No freedom of choice by the asylum seekers, given the random allocation and thus no pull-factor.
- The role of EASO in managing the distribution mechanism and support to Member States should be based on the request by each MS.

We have to discuss how to better structure pre-distribution checks (security and health) to be carried out in the Member State of first entry. As a general principle, Member States of allocation should be responsible for the examination of the applications, including those carried out according to an accelerated procedure (for example, evaluation of applications by nationals of safe countries of origin).

Consequently, provided the new system is based on the above principles, no temporal limitation for the responsibility of the Member State of allocation (which will register the asylum seekers in EURODAC) would be foreseen, and this should include also the necessary actions to be taken after the rejection of the applications, and in particular the return of migrants not entitled to international protection to their countries of origin or transit. FRONTEX should support responsible Member States in facilitating returns to those countries.

Such a system of shared responsibility would be coessential to the establishment of an authentically European system for management of returns that would complement current working bilateral agreements of Member States with third countries. It should be clearly acknowledged that shared responsibility is a founding principle of the EU common migration and asylum policy, including the management of people to be repatriated.

In case of secondary movements before a decision on the merits of applications or after a positive decision is made, the applicant concerned is transferred to the responsible Member State. Where, on the contrary, a negative decision is made by the responsible MS and the refused applicant has moved to another MS, the latter should enforce the negative decision of the former MS and directly return the refused applicant (mutual recognition of negative decisions).

The entry of those disembarked into the EU territory after SAR operations, is not to be considered in the same way as other irregular entries in the sense of Article 13 of the current Dublin Regulation: they are brought to the EU in compliance with international law and are not a result of inefficiencies in border controls. Consequently, their distribution should proceed in parallel to the general allocation mechanism, in the light of their specific legal status.

We support one-level appeals on the issue of legal remedies (against denial of asylum application and refusal of entry/return decision) and avoid abusing the system, applying short timeframes setting aside suspensive effect in e.g. subsequent applications or to frustrate an effective return and identifying cases in which abusive appeals may be considered as inadmissible.

Similarly, it should be recognized that the issue of secondary movement is more complex than what appears. That is why we believe that the Schengen and Dublin acquis must remain distinct; besides making full use of existing instruments and policies to tackle secondary movements (cross-border cooperation, use of technology, border information and control systems), the overhaul of the asylum system will in itself contribute to contrast such movements and make unnecessary the introduction of safeguard mechanisms in the field of internal border controls. Reintroduction of internal border controls must revert to an extraordinary, proportionated and limited in time last resource. The image of traditional controls in our internal borders makes us go back decades in the European Project and could jeopardize trust among MS. In order to reinforce security in our territory, less coercive and more efficient measures are possible.

At the same time, we are fully aware that such a renewed CEAS will not work properly without an integrated EU migration policy and a strong action in the field of cooperation with third countries.

As regards the external dimension of the migration phenomenon, we are convinced that migration flows are a reality to be managed in an integrated and structural manner, requiring a European governance. Cyprus, Greece, Italy, Malta and Spain consider that further cooperation with UN organizations in the Countries of origin and transit deserves high priority for the European Union. The Commission should ensure that already adopted EU-Readmission Agreement and EU-practical arrangements are fully implemented without distinction.

The European Union should provide clear and effective responses to the migration emergency. To this end, it is essential to strengthen cooperation with African and Asian countries of origin and transit of migration flows with a view to fight irregular migration, also by preserving successful bilateral relations between EUMS and those countries. For example, North Africa and the Sahel region as well as the Silk Route countries need structured interventions, also in terms of capacity-building measures, in coordination with the various United Nations organizations operating on the field, such as the International Organization for Migration and the UN High Commissioner for Refugees.

Among that overall cooperation, it is key to consolidate collaboration on border control, fight against human smuggling and SAR with coastal countries of last departure. That has proven to be the most effective way to prevent irregular flows, based on a tailor-made approach, depending on the needs of every third country.

In this context, the European Union should prioritize a stimulus to the assisted voluntary returns projects from the main transit countries, such as Algeria, Libya, Mauritania, Morocco, Niger and Turkey, to the countries of origin of flows, according to the applicable international law. The EU should guarantee adequate financial support for the host communities receiving a large number of refugees.

Cooperation with countries of origin and transit requires strong and predictable financial and political support to those countries over the next MFF. In the context of the MFF 2021-2027, a clear allocation of resources exclusively dedicated to the European management of migration is needed. To ensure these necessary interventions, it is pivotal that the new NDICI instrument, intended to finance the EU projects in the field of migration, has sufficient resources. It should be a flexible and straightforward facility, focused on strengthening operational and institutional capabilities in the fight against irregular migration and illegal networks in countries of origin and transit.

We call for the establishment of legal channels to Europe for beneficiaries of international protection, through the opening of European humanitarian corridors from Libya, Niger and Rwanda, whose coordination lies with the European Commission, financed with funds directly allocated by the European Union.

Legal migration and integration should be considered as basic components of the EU migration policy as part of a holistic and comprehensive approach. In order to obtain a "win-win" situation, legal migration should be depending on the actual needs of the economy and the labour market of each MS in line with the respective competences of the Member States and the EU. As for the internal dimension, integration based on a set of common European values should be promoted to enhance social cohesion and fight discrimination and racism. As regards the external dimension, legal migration from countries of origin and transit may contribute to build a genuine partnership needed to manage mixed migration flows phenomenon, fight illegal migration and promote the integration of migrants. The European Union should financially support Member States in this field.