



Council of the
European Union

Brussels, 17 January 2022
(OR. fr)

5361/22

LIMITE

JAI 54
MIGR 12
ASILE 6

NOTE

From:	Presidency
To:	Delegations
Subject:	Migration and asylum: a gradual approach for the benefit of the European Union and all Member States

Courtesy translation

Delegations will find attached the note relating to the gradual approach of the Pact.

11.01.22

Migration and asylum: a gradual approach for the benefit of the European Union and all Member States

Whether we protect the Union's external border, in the South, East or even North, or whether we are transit or destination countries, we are all concerned by immigration, borders and asylum issues. Migration pressure remains high and recent developments in the Mediterranean, in Afghanistan, at the Belarusian border or in the English Channel underline the importance of continuing to adapt to this reality. A lasting solution can only be European.

The discussions held in recent months on the Migration Pact proposed by the Commission have enabled us to identify the points on which we are ready to work together now and those on which we still need to build the foundations for trustful cooperation. The Presidency therefore proposes to adopt a gradual approach, in order to make initial concrete progress now, while maintaining the same level of ambition in the long term.

A step-by-step approach to meet the needs of Member States

We need to ensure that, at each stage, there is equivalent progress in the different areas, be it the external border, solidarity, responsibility rules or the external dimension. Thus, each stage of the strengthening of European migration policy should include a balanced set of measures to ensure :

- *a more effective control of our common external border*, which will necessarily have to be associated with support for the Member States most concerned because of their geographical position (financial, logistical, material and human resources of the Union and its agencies or of the Member States);
- *a more operational and united EU policy on return and readmission*: in this respect, it is crucial to take full account of the return policy within the external dimension of the EU's action on migration;
- *greater solidarity with the States making a substantial reception effort*, in order to ensure a fair distribution of the effort within the Union;
- *regulation of migratory movements*, based in particular on increased convergence of asylum systems and a limitation of multiple applications, which is the first condition for a dignified reception and better integration of people in need of protection.

This gradual approach can only bear fruit if the specific characteristics of each Member State are taken into account. At each stage, it must be possible to identify concrete and realistic measures that can better guarantee the interests of the Union as a whole while ensuring a fair balance between this diversity of interests.

Method

A considerable effort has been made in recent months to identify the various parameters determining the overall balance of the Pact. The Presidency proposes to build on this collective work, in an operational and pragmatic spirit, to identify the elements of the first stage of the Pact.

Within the framework of this first stage, certain elements could be put in place on an experimental basis or for a limited period of time, for example by means of "sunset clauses".

Once a first stage has been put in place and its effectiveness established, additional stages can be envisaged in order to achieve the ambition of a comprehensive asylum and immigration policy at European level.

Content of the first step

The Presidency's proposal is to agree on a "core" of measures, in each of the Pact's components, taking into account the primary need to ensure a fair overall balance.

One of the major challenges we collectively face is the controls and registration procedures at our common external border: common rules will benefit the European Union and the Member States as a whole, both from the point of view of the security of the Schengen area and the control of migration flows. Furthermore, the interoperability of European information systems, which is in the process of being achieved, only makes sense if rigorous common procedures are applied at the border.

Given the burden of these controls on the Member States of first entry and the specificities of external border control, in particular when it is a maritime border, it could be envisaged to implement, as a first step, some of the elements of "screening".

The precise elements retained for this first stage in terms of checks (nature of the checks, scope, practical arrangements) and registration will have to be specified in the coming weeks.

By way of illustration, in this first stage, screening could include:

- *controls on health and safety checks;*
- *an obligation to "keep at the disposal of the authorities" persons apprehended at the external borders, by increasing detention capacities or, in the first instance, by alternative measures, such as home custody.*

The asylum procedure at the border would only be provided for in the later stages.

Registration in Eurodac is also an important element. A specific category for search and rescue operations could be introduced.

There is a need to progress at the same pace in the field of solidarity. The reinforcement of external border controls and the reception of migrants entail costs that fall mainly on certain Member States. In these circumstances, solidarity measures, in various forms, adapted to the reality of the needs of these Member States and to the burdens linked to the new border procedures, would be implemented in the short term.

This would first involve *financial and operational support measures for the Union, its agencies (Frontex, EASO, Europol) and the Member States*. From a financial point of view, European funds could be mobilised but the question of a financial contribution from one Member State to another should also be examined. In addition, EU agencies and Member States could provide human or capacity support to meet immediate needs, particularly in relation to new controls. In times of crisis, the Member States should also be able to intervene in anticipation of or in addition to Frontex, on the basis of the cooperation mechanism provided for in the Prüm Decision and within the framework of a close coordination and steering mechanism.

Secondly, there would be *the return and readmission policy*. A rapid and effective implementation of the external dimension can make an important contribution to the overall response; this is the objective of the operational mechanism (MOCADDEM) in which all relevant actors (Commission, EEAS, Member States, agencies, etc.) will participate.

Several concrete actions should be envisaged in the coming months:

- *concrete progress on the implementation of Article 25a of the Visa Code and the use of the NDICI instrument;*
- *a strategy to conclude more readmission agreements with priority third countries;*
- *the development of Frontex's external action, which could usefully be based on the working arrangement and status agreement models;*
- *better pooling of return efforts* (assisted voluntary return, joint policy dialogue on travel documents, sharing of national return resources);
- *the appointment, as soon as possible, of an "EU Return Coordinator"* to encourage the exchange of best practice and to improve the coordination of Member States in their efforts;
- *the involvement of agencies and Member States that have developed good practice* (e.g. Europol, joint cross-border patrols, police and customs cooperation centres could play a greater role).

The third aspect to be dealt with at the first stage is support in terms of reception effort. In the light of previous experience, such support could take the form of a new mechanism for the relocation of persons in need of protection, particularly with regard to the provision of assistance at sea. The mechanism thus defined should be simple, pragmatic, predictable and credible. It should be operational in the very short term and involve a sufficient number of Member States to allow a balanced and sustainable distribution of the effort. Member States not participating to the above framework would have to provide alternative solidarity measures, which should include direct financial support to both frontline Member States and voluntary Member States.

Another issue to be discussed in parallel *is the prevention and treatment of secondary movements.* Progress could be sought in a better implementation of the existing legislative framework, especially with regard to the Dublin rules. In particular, appropriate protocols need to be put in place to allow transfers to continue despite an uncertain sanitary situation.

Finally, a common initiative aimed at strengthening the convergence of national asylum practices would be likely to better prevent these secondary movements and in particular multiple asylum applications. The entry into operation of the new European Asylum Agency will be an opportunity to set a new course in this direction.