

Non-paper

NEW PACT ON MIGRATION AND ASYLUM

JOINT POSITION OF POLAND, HUNGARY, SLOVAKIA, CZECH REPUBLIC, ESTONIA, AND SLOVENIA

The non-paper aims to indicate the elements of the New Pact on Migration and Asylum which are supported by all Member States whilst voicing the concerns of the co-signatories regarding the unresolved issues. This should serve as a constructive input for making further progress in the negotiations on the Pact.

The main goal of the reform is to set up the framework for the European asylum and migration management system in a comprehensive, sustainable, efficient, safe and crisis-resilient form. Whereas some proposals from the Pact are supported by all Member States, diverging views persist on the others. The Member States need to act together and develop a system which will be acceptable to all of them and feasible in practice.

Well-functioning EU asylum and migration policy must anticipate migration developments and focus all the efforts to truly strengthen the external dimension, improve border management and provide international protection to those in need while ensuring rapid returns of others. The reform has to be a result of finding a good balance between responsibility and solidarity.

We see a broad agreement among the Member States on external dimension being the most important element of the system. Focussing on the external dimension allows to better handle migration-related challenges beyond the EU what should result in decreased numbers of migrants attempting to enter the EU illegally. The EU has a duty to provide targeted, sustainable and tailor-made measures aimed at addressing the root causes of migration, strengthening cooperation with key countries of origin, supporting the transit countries in their national system's capacity building, especially on granting international protection as close to the region of origin as possible and in stemming illegal migration. In this context it could be feasible to continue exploring the possibility of establishing of regional disembarkation platforms outside the EU, in close cooperation with relevant third countries and other actors. At the same time, a roadmap to outline and guide the joint efforts in the external dimension should be created and followed.

Effective returns should be the main outcome of the cooperation with third countries. In order to truly enhance partnerships with key third countries and increase the return rates significantly, it is necessary to use all the available policies, incentives, leverages and other tools in line with the "more for more and less for less" principle. Even more so, the Commission, the European Union External Action Service, relevant agencies (Frontex in particular) and Member States already have various tools at their disposal. Now it is time to act in a coherent and coordinated way, with a vision of truly common EU policy. The assessment in accordance with the Article 25a of the Visa Code has to be presented by the Commission as a matter of urgency, together with tailor-made action plans including measures that would allow to optimize joint efforts, and, thus maximize their impact. To this end, possibilities given by the Informal Coreper Mechanism should be fully embraced. There is also a need to develop a European Return System based on the well-functioning EU readmission agreements and arrangements with relevant third countries. Their implementation has to be ensured as a top priority.

At the same time, we should be aware that the efforts made on the external dimension alone are likely to prove insufficient. Therefore, **strong and durable protection of the EU external borders and the Schengen area must be ensured.** The European Border and Coast Guard Agency's recently strengthened mandate has to be fully implemented. A number of existing EU large scale IT systems

were improved and the creation of new ones (EES, ETIAS) was agreed. Now we have to move forward with their development and interoperability. The overall goal, however, will be difficult if not impossible to achieve without establishing new pre-entry procedures. The pre-entry screening procedure should result in registration and identification of all migrants arriving irregularly. Furthermore, most of the necessary security checks should be carried out during this stage. The border procedures should be widely applied. In order to avoid the possible misuse of rights and procedures, the exceptions cannot be explicitly defined. The border procedures should also apply to the vulnerable persons, to whom the adequate reception conditions have to be provided. Excluding the applicants from the border procedure and giving them access to the territory requires careful assessment beforehand. Legal fiction of non-entry and the EU-wide rules of detention as well as their sustainable and practical implementation should be further discussed. The purpose of the pre-entry procedures is to authorize entry to the EU only to persons in factual need of international protection who do not pose a threat to the EU's security, public order or public health. The rest, including persons who were refused refugee status or subsidiary protection, should be refused the entry or become subjects of the return procedure at the border.

The internal dimension of the new asylum and migration management system should focus on responsibility - more effective procedures and counteracting abuses in particular. Future-proof solutions must not constitute pull-factors, increase illegal migration and secondary movements thus undermining the necessary efforts made to achieve the main goals of the reform.

Bearing in mind the fundamental human rights, we have to properly balance the obligations of the maritime law and the issues related to the internal security of the European Union. **There is a necessity to establish a framework for the vessels owned or operated by NGOs or other private entities conducting search and rescue operations at the Mediterranean Sea**, such as standard operating procedures, code of conduct, monitoring and supervision of their activities. Persons disembarked should not be perceived as a separate category of migrants. Establishment and implementation of clear rules in this regard should result in preventing perilous sea crossings as well as in limiting a pull-factors and incentives for migrant smuggling.

In our opinion the Pact lacks a proper balance between principles of responsibility and solidarity. They should better relate to all policy areas set out in Title V, Chapter 2 of the TFEU as indicated directly in the Article 80 of the TFEU. Whilst **there is a common acceptance for mandatory solidarity in crises, the flexibility and use of wide and open catalogue of instruments are crucial.** Furthermore, it should be underlined that the actions on the external dimension and the external borders protection should be considered as solidarity measures. Similarly, operational support provided by the relevant EU Agencies as well as special assistance through EU funds are an expression of the European solidarity. In the previous years a lot has been done in order to provide support to the frontline Member States. It is necessary to assess the level of implementation and efficiency of the legislative and operational measures undertaken in the past.

The proposed distribution key taking into account solely the simple algorithm based on population and GDP is not acceptable. The way of assessing the fair share of solidarity should reflect the factual efforts of Member States in the asylum, migration and border management, their effectivity in returns, actions on the external dimension, their overall capacity and possible migratory pressure on their territory.

We are strongly convinced that **under normal circumstances, once the external dimension is properly addressed and the obligations of the Member States in protection of the external borders and internal procedural obligations are met, there will be little or no need to trigger the solidarity**

mechanism. However, if still necessary, it should be the Council taking the decision on the triggering of the solidarity mechanism and the way of fair burden sharing.

The relocation or other forms of admission of migrants have to be of voluntary nature. Member States must not be forced to implement any particular instruments that could be considered as violation of their sovereignty. In this context, we feel obliged to voice our **concerns also on the concept of return sponsorship as the only equivalent to relocation.** It might be misleading – and will likely result in the redistribution of illegal migrants who do not have the right to remain in the EU. There is a risk that the concept could prove counterproductive and create incentive for non-cooperative migrants who should be returned. Furthermore, feasibility of the concept remains an issue due to existing disproportions in diplomatic potentials of Member States. Consequently, the efforts should be put on increasing the effectiveness of returns in different ways, including through making a full use of Frontex mandate in return policy, working agreements and arrangements with third countries, common implementation of the safe country concept or the revision of the Return Directive instead.

Therefore, **the catalogue of solidarity measures requires further discussions** and their outcome should be properly reflected in the Asylum and Migration Management Regulation. In order to express solidarity **the Member States should be able to choose freely from a wide range of tools, taking into account their capacities, possibilities and preferences, given the possible political implications.** Such approach will increase their ownership in dealing with the extraordinary situations. There is no consensus whether to give to the Commission decision-making powers in this regard. Without political will of the Member States, solidarity will never be implemented properly in practice.

The Pact focuses mostly on the Mediterranean migratory routes. There is an urgent need to strengthen our cooperation with countries in North Africa and in the Western Balkans as well as to fully implement the EU-Turkey statement. We agree that attention should be put on addressing the challenges in this area, nevertheless, **all the future solutions should also take into account the risk of instabilities in all neighbouring countries and of migratory pressure via other routes,** e.g. through the EU's Eastern Border.