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DEBAT D'ORIENTATION SUR LA MIGRATION

Note de cadrage de
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en accord avec Mme MOGHERINI

Destinataires : Membres de la Commission
Directeurs généraux et chefs de service

**NOTE OF FVP TIMMERMANS AND COMMISSIONER AVRAMOPOULOS
IN AGREEMENT WITH VP/HR MOGHERINI FOR THE ORIENTATION DEBATE ON MIGRATION**

1. Introduction

People reach Europe's borders for a wide variety of reasons and in a variety of ways, some legal and orderly, others not – sometimes with tragic results. Behind each face arriving at our borders, there is an individual: a businessperson travelling to work, a tourist who wants to see the world, a student coming to study, an economic migrant seeking to make a better life, a victim of people-traffickers, a parent trying to get their children from a war-zone to safety, persons who by their political views or mere race or religion face persecution and death if they go back home.

How should the EU respond to the complex and mixed nature of flows of people from third countries? It is a question full of paradox, often divisive and sometimes driven more by perception than fact:

- We have international obligations to uphold our values and provide protection and humanitarian support to those who really need it. But we know that on average only a third of asylum claims prove to be founded, and the pressure of receiving asylum seekers falls very unevenly across our Member States.
- Demographic change and the need to have the skills we need for competitive economies and sustainable social welfare in Europe mean we must seize the opportunity to bring in talent from abroad. But 57% of Europeans have a negative view of migration, local populations perceive foreign workers taking European jobs, and there is the real risk of brain drain in the countries of origin.
- We want to save lives and stop the abusive trafficking and smuggling of people by criminal groups. But we know that making it too easy for people to arrive at our borders could entail the risk of becoming a further pull factor for others.

The need to master the challenges and benefit from the opportunities of migration will be with us for many years to come. As President Juncker noted in its Political Guidelines "*Europe needs to manage migration better, in all aspects*" - the humanitarian imperative, the need for solidarity and the demographic challenges. Well-managed migration policy¹ is therefore one of the ten priorities at the heart of the Political Guidelines, with four main objectives which are interlinked and equally important:

- to have a *strong common asylum policy*;
- to promote a *new European policy on legal migration*;
- to deal more robustly with *irregular migration* and human traffickers and smugglers, including through better cooperation with third countries; and
- to *secure Europe's external borders*.

¹ The vast majority of citizens (71%) support the development of a common European policy on migration – Eurobarometer 82, Autumn 2014.

As announced in the Commission Work Programme for 2015, the College will adopt later this year a "European Agenda on Migration" in which it will articulate the short and long term actions needed to achieve these goals, bearing in mind that they are interlinked and require a comprehensive and coherent response that also integrates in full the external dimension of migration policy, streamlining Migration and mobility objectives and considerations in all EU external action policies and tools (e.g. foreign policy, trade policy, development assistance, neighbourhood policy, humanitarian aid).

The purpose of the present orientation debate is to allow the College to make a first assessment of options for short and longer term actions, and to express its view on the right level of ambition and the timing for achieving the four objectives.

2. Why do we need a new European Agenda on Migration?

In line with the Treaty in the Functioning of the European Union (TFEU), one of the main objectives of the European Union in building up an area of freedom, security and justice, is to frame a policy on asylum, immigration and external borders controls which

- i) is based on solidarity and fair sharing of responsibility between the Member States;
- ii) must ensure the efficient management of migration flows, fair treatment of third countries nationals residing legally in the Member States, and the prevention of and the fight against irregular migration and trafficking of human beings;
- iii) is fully in compliance with our common European values, the principle of *non-refoulement* (ensuring that the persecuted are not returned to face more persecution), as well as all the general principles, Conventions and Protocols of international law on the protection of *refugees*.²

Over the last years the EU has taken legislative and operational measures to this end, including minimum rules asylum system, a Blue Card for legal migration, a visa policy, and European return and readmission policy, a common border code and the Frontex agency which can support Member States in applying it. Externally the EU has projected its migration policy goals through cooperation with third countries, to provide protection in conflict regions, to facilitate resettlement, to tackle trafficking routes at origin.

But there are limits to what the EU can do: under the Treaty, Member States remain responsible for the policing of the external border and for deciding the volume of economic migrants that they accept. And some policies are not yet as genuinely common as they need to be: there are still very divergent national approaches to asylum, and there is a need to improve the way the common border rules are put into operation in practice and to bolster the European resources available for that purpose. We are also still a long way from true solidarity and fair sharing of responsibility along EU Member States.

The four objectives set out in the President's political guidelines reflect four key issues:

a) Refugees and the demand for asylum

Conflicts and instability from Syria and Libya to Kosovo, from Eritrea to Afghanistan have caused an unprecedented rise in the number of asylum-seekers coming to the EU. Given the risk of new political

² See Articles 67(2) and 77 to 80 TFEU.

crises in wide regions of the EU neighbourhood and beyond, the influx of persons in need of protection will continue. While fragile third countries have increasing problems in managing the impact of large refugee populations settling in, also in relatively stable third countries the efforts to cope with massive influx of persons are falling short and people continue risking hazardous journeys towards Europe in search of better protection.

The EU has stepped up efforts to save lives in the Mediterranean, including through the combined action of Frontex and national authorities. However, whilst the current "Triton" operation in Central Mediterranean does have an impact, its limitations in resources and tools show clearly how the EU remains vulnerable to criticism after every human tragedy.

These pressures have put the spotlight on the principles of solidarity and fair sharing of responsibility. Major differences in the share of asylum applications accepted are seen to be failing as the rules on management of asylum applications are not applied.

State of Play: Europe has always been rightly proud of its record on international humanitarian obligations, and this is at the heart of Treaty provisions for the Common European Asylum System, but for example the Dublin II Regulation of 2003 identifies the Member State responsible for processing an asylum application, but has been subject to criticism for poor implementation.

Key figures:

- The European Union hosts a total of 1 million recognized refugees representing 7.6% of total refugees worldwide, and around 0.2% of the EU's population.
- Asylum flows to the EU have shown an increased trend to reach over 435,000 applications in 2013 and around 600.000 in 2014
- In 2014, 90% of Asylum applications in the EU were lodged in only 10 Member States.

b) Attracting skills and talent

Migration is a driver for economic development. Recent data confirm that the working-age population in advanced economies will shrink in the coming years, intensifying the global race for skilled and even less skilled workers among developed economies. But the EU is seen as falling behind in the global race for talent. The EU must also remain conscious of the potential impact of emigration on vulnerable developing economies ("brain drain") – even if remittances can also be a source of economic strength for those countries.

State of Play: A body of eight Directives on aspects of legal migration – including the "Blue Card" Directive for highly-skilled workers. Europe has not succeeded to be an attractive destination for skills and talents.

Key figures:

- By 2060 there will be only two persons aged 15-64 for every person over 65, compared to four today.
New immigrants represented 15% of entries into strongly growing occupations, such as science, technology and engineering, as well as the health and education professions.
- According to the World Bank, remittances to developing countries are estimated to have reached \$404 billion in 2013 and are expected to rise to \$516 billion in 2016.

c) Irregular migration:

Alongside an increased number of refugees, Europe is still witnessing constant irregular migration flows. Irregular migrants are such for different reasons: some do not succeed in meeting the criteria for asylum but do not return to their home countries, some are visa over stayers, and other cross borders irregularly and face return procedures and retention. Irregular migration is a challenge that the EU needs to face with solid responses. A failure to define a coordinated action and persistent differences between Member States also damage the credibility of EU migration policy as a whole.

The challenge has been exacerbated by the rise of human smuggling. In a context of international instability smuggling and trafficking of migrants has increasingly become a profitable business causing unacceptable humanitarian costs and irregular migration.

State of Play: Legislation on irregular migration includes common standards and procedures on return of irregular migrants, and rules on sanctions for employers of illegally staying third country nationals. Readmission agreements set the rules to facilitate the taking back of irregular migrants by third countries. Mobility Partnerships is one of the tools to put in place agreements with third countries, often combining readmission agreements and visa facilitation. Eight such Partnerships are in place.

Key figures:

- In 2014, Frontex estimates the number of detections of illegal border-crossing at about 278 000. This is twice as many as in 2011 (141 000) during the initial stages of the Arab Spring.
- In 2013, the number of return decisions issued by the EU Member States was 425,875, while the number of persons returned in practice was 166,975, i.e. less than 40%.
- UNOCD statistics estimating that smugglers operating at the European and US borders alone amass yearly profits of more than \$6.7 billion. The annual profits obtained by a single organization involved in smuggling are reported to be up to over EUR 12 million
- Member States in 2010-2012 have registered 30.146 victims of trafficking and the real number of undetected victims is certainly much higher

d) Border controls:

An area without internal borders is one of the most cherished accomplishments of the EU. Failings at the external border harm the system as a whole.

State of Play: Border management is a shared competence between the Union and the Member States. Member States remain responsible for controlling their own external borders, while the EU defines the legal framework, facilitates cooperation – most notably through Frontex – and gives financial support.

Key figures:

- It has been estimated than since 2000, about 25,000 migrants have lost their lives trying to reach the EU, most of them in the Mediterranean.

3. The main elements to be addressed in the upcoming European Agenda on Migration

The European Agenda on Migration should implement the objectives set out in the President's Political Guidelines by working closely together in a spirit of solidarity: we need to protect those in need, to contribute to growth in Europe and in third countries and to safeguard European borders.

In the short term, the Agenda should harness all relevant policies and tools and enable us to be more effective in prioritising migration policy, firstly in the tools of Europe's external action (e.g. foreign policy, trade policy, development assistance, neighbourhood policy, humanitarian aid), but also to entrench migration policies in our economic, labour and social policies. It should also launch a debate on what political and financial investments we are ready to make that ensure the proper and effective management of migration – to lead in the long term to a consensus between European institutions, the Member states, national parliaments, regions and cities, private sector, social partners and citizens. This consensus needs to be earned: through showing that the EU can deliver effectively, that it can offer the tools needed to ensure added value and a fair sharing of responsibility. Cooperation with third countries will be of utmost importance in implementing all the main objectives of the Agenda.

3.1 A strong common asylum policy

To create a strong common asylum policy that protects those in need and respects our shared values, and in particular the principle of *non-refoulement*, the first step is the full and coherent implementation of the newly agreed common asylum system.

The Commission as *Guardian of the Treaties* should make all efforts to ensure that any divergences in national implementation are removed. This could involve directing more resources to support Member States under pressure. It could include supporting Member States in systematic identification, registration and fingerprinting of asylum seekers using EURODAC³. This should bring us to ensure the full use of existing tools under the Dublin Regulation.

When addressing protection needs we also need to cater for the most vulnerable categories including, among others, minors and victims of trafficking.

Cooperation with third countries is key to reinforce EU Common Asylum Policy in a coherent and comprehensive manner with joint efforts to address the root causes of migration and enhance local/regional protection in the countries of origin and transit. To this end, it will be essential to more systematically mainstream migration into the programming of development cooperation and into national and regional development strategies.

The increased use of relocation and contributions to global resettlement efforts, on a voluntary basis, while taking into account the efforts already carried out by affected Member States, could also contribute to support Member States under pressure and show solidarity. The possibility to use in a more systematic manner prioritized and accelerated border procedures in justified circumstances, as provided by existing legislation, could also be explored. The European Asylum Support Office (EASO) could support Member States in this endeavour and build on its pilot project on Joint Processing.

³ EURODAC is an IT system allowing of asylum seekers and some categories of illegal immigrants Member States to compare fingerprints for the effective application of the Dublin Convention.

In this respect, EASO could be strengthened in terms of assisting Member States in dealing with refugees and asylum application in emergency situations, and where appropriate supporting third countries in developing capacities in managing refugee and asylum policies.

3.2 A new European policy on legal migration

We need a new legal migration policy that could help us to address shortages of specific skills and attract talent to better cope with the demographic challenges of the European Union. This is a challenging and a long term process and can only work in full recognition that only Member States are competent to determine how many migrants coming from third countries can enter their territory in order to seek employed or self-employed work.

As a first step, the Commission will review the “Blue Card” legislation and its unsatisfactory state of implementation. The EU-wide “Blue Card” work permit, introduced by the EU in 2012, allows highly-skilled non-EU citizens to work and live in any EU country except Denmark, Ireland and the United Kingdom. However, only 10 000 Blue Cards were issued in the first two years of the scheme. The review needs to look at whether there are more fundamental shortcomings: working properly, a Blue Card scheme would be an important downpayment to show a new approach to attracting talent.

More generally, a new European policy on legal migration can only be effective if it is supported by effective employment policies aiming at identifying skills gaps and attracting the right talents. This could include giving more EU-wide rights to those who meet entry criteria, and their families, as well as working with employers held back by the labour shortages. At the same time, the EU needs to be sensitive to the risk that vulnerable third countries will suffer from brain drain and help to maximise the economic benefits (for both sides). To prepare this we should soon launch a quick public consultation to understand the issues related to EU Blue Cards.

Supporting effective integration policies can both increase Europe's attractiveness and benefit local communities through fostering social cohesion and economic dynamism.

This could be supported by an ambitious and strategically focused visa policy that can contribute to growth, development and competitiveness, both for the EU and for its partners. The role of mobility as economic and social development drivers for the EU and third countries should be enhanced, including the mobility partnerships and their potential impact on development.

Through mobility partnerships, visa policy can show a Europe open to the globalised economy and make a real contribution to restart economic growth in the EU. This would have to go hand in hand with guarantees against abuse.

In developing this policy, we could look how to harness circular migration in order to foster development in countries of origin, reduce brain drain, but also in order to use our development instruments to help better manage migratory flows.

3.3 More robust fight against irregular migration

The Agenda should enable us to deal more robustly with irregular migration, notably through better cooperation with third countries, including on the fight against smuggling and trafficking and on readmission and return. In order to establish an effective common return policy, we need more robust action to ensure that migrants who have no right to stay on our territory are readmitted in a third country and receive the necessary support to ensure a sustainable return. To achieve this, we need to reinforce our cooperation with third countries of origin and transit to achieve full

implementation of existing readmission agreements with third countries. This may need more incentives to be brought to bear. In addition, we need to increase practical cooperation amongst Member States, FRONTEX, and the relevant international organisations and NGOs. We should strengthen the use of joint EU actions on return, in particular under the coordination of Frontex.

Specific initiatives aimed at tackling abuses have to also be put in place. We need to be ready to address violations by third country nationals of our visa regime, in particular the phenomenon of over stayers, and of the internal mobility rules: removing internal borders does not mean unfettered free movement for all.

We also need to be more vigorous in our shared fight against human traffickers and smugglers. Smuggling remains high profit, and low risk. One step would be clear targeting on priority countries and routes. Another would be to increase the tools available (e.g. better use of Liaison officers in third countries, an enhanced role of EU Delegation in strategic countries, better information exchange, joint operations, better use of EU Agencies), as well as enhanced cooperation with third countries of origin and transit like Turkey, Tunisia, Egypt and Morocco. The established cooperation frameworks (Rabat, Khartoum, Budapest processes) should target in particular the local and international networks which control smuggling. Such cooperation complemented by a parallel EU support – including through EASO - to third countries in dealing with emergency situations.

3.4 More secure borders

Our common asylum and migration policies will only work if we can prevent an uncontrolled influx of illegal migrants. Our border policy stands at the forefront of this effort. The enforcement of the surveillance of EU external borders is of vital interest to all Member States. One option is to step up the operational capacities of the European border agency FRONTEX. The preparation of the European Agenda on Migration is the opportunity to return to the difficult discussion whether in order to address the evolving challenge FRONTEX needs a budget increase and or pooling more operational assets and human resources from Member States. This discussion could also look whether additional financial resources can be found within the normal budgetary cycle and the overall ceiling of the Multi-Annual Financial Framework. A budget of just EUR 90 million a year is certainly not equal to the task of protecting Europe's common borders. We need to pool more resources amongst Member States to reinforce the work of FRONTEX and put European Border Guard Teams into action for quick deployment in FRONTEX joint operations and rapid border interventions. Border guard efforts could be focused on sections of the border affected by strong migratory pressure and high risk of irregular entry and increase its reactivity towards rapid evolutions in migration flows.

4. Questions for discussion

- *Which measures and work strands are the most important to achieve the key objectives of a comprehensive EU policy? Should some of those be pursued more intensively than others?*
- *How can we maximise the input of different policies and of the internal and external dimensions to a shared European Agenda on Migration?*
- *In parallel, should we already now launch the debate on how to shape in the long term a genuine and fully integrated EU Migration policy?*