

STRENGTHENING OF EUROPEAN POLICIES ON THE MIGRATION PHENOMENON

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***Abstract.** The EU's external migration policy is based on EU legislation and instruments (so far, it comprises nine EU visa facilitation agreements and thirteen EU readmission agreements plus seven directives regarding legal and illegal migration), political instruments (a large number of political dialogues, often supported by action plans), operational support and strengthening of capacities (including through EU agencies such as FRONTEX) as well as on a wide range of program support actions and projects that are made available to many stakeholders, including civil society, migrant associations and international organizations.*

***Keywords:** migration policy, EU security.*

The "EU Internal Security Strategy in Action"¹ – builds on what the EU Member States and institutions have already agreed on and proposes a common line of action for the next four years in order to be more effective in combating and preventing serious and organized crime, terrorism and cybercrime, in strengthening the management of our external borders and in developing a resilience capability in the event of natural or man-made disasters.

As regards internal security, the role of the EU is to develop common policies and legislative texts as well as practical cooperation in the field of police and judicial cooperation, border and crisis management. As part of efforts to meet security objectives, both internal and external policies play a key role.

Therefore, the "EU Internal Security Strategy in Action" proposes a joint program for Member States, the European Parliament, the Commission, the Council, agencies and other actors, including civil society and local authorities. This program should be supported by a strong EU security industry where manufacturers and service providers work together with end-users. Joint efforts to address the security challenges we face

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¹ The European Commission, Bruxelles, 22.11.2010, COM(2010) 673.

today will also help to strengthen and develop the European Social Market Economy model presented in the Europe 2020 Strategy. "The EU's Internal Security Strategy in Action", as well as the instruments and actions for its implementation must be based on common values, including the rule of law and respect for fundamental rights as set out in the *EU Charter of Fundamental Rights*².

Internal security cannot be achieved without taking into account the rest of the world and it is therefore important to ensure coherence and complementarity between the internal and external aspects of EU security. The values and priorities of internal security strategy, including our commitment to promoting human rights, democracy, peace and stability in and beyond our neighborhood, are an integral part of the approach set out in the European Security Strategy³.

A special attention has been paid to managing migratory flows. The European Council considers that closer cooperation with third countries is needed to help establish a coherent policy in this area. Partnerships with third countries would combine measures to facilitate well-managed legal migration opportunities and the benefits they bring with measures to combat illegal migration. These measures should be promoted on the basis of respect for the competences of the Member States and the specific needs of their labor markets. At the same time, the adopted measures are aimed at: a) protection of refugees; b) determining the root causes of migration; c) a positive effect on the development of the countries of origin⁴.

In recent years, two major initiatives have been launched on operational cooperation at the maritime borders-one on human trafficking and clandestine immigration, under the aegis of Frontex, and the other regarding drug trafficking in the context of MAOC-N⁵ and CeCLADM⁶.

EU Member States hardest hit by the economic crisis, such as Greece and Italy have also served as the main points of access for migrants and

² "Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union" – COM(2010) 573

³ The "European Security Strategy: A Secure Europe in a Better World" was adopted in 2003 and revised in 2008

⁴ Mazilu, Dumitru *Tratatul de la Lisabona – un pas important în procesul construcției europene, în dezvoltarea unui spațiu de libertate, securitate și justiție, Universul Strategic, Revista Universitară Română de Studii de Securitate, (in English: The Lisbon Treaty-an important step in the process of European integration, the development of an area of freedom, security and justice, Strategic Academic Universe Magazine Romanian security studies)* ISSN 2068-1682, nr. 1/2010.

⁵ MAOC-N (Maritime Analysis and Operations Centre – Narcotics).

⁶ CeCLAD-M (Centre de Coordination pour la lutte antidrogue en Méditerranée).

refugees due to their proximity to the Mediterranean Basin. Recently changing migration patterns have also exposed countries such as Hungary, located on the eastern border of the EU, to a sharp increase in illegal migration⁷.

States that serve as access points bear unilateral responsibility for migrants under the Dublin Regulation⁸. Revised in 2013, the Regulation stipulates that asylum seekers must remain in the first European country they come into and that that country is solely responsible for examining migrant asylum applications. Migrants traveling to other EU countries can be deported back to the EU country where they first entered.

Reforming the Dublin Regulation is an important step in establishing a common European asylum policy. Based on the current system, the burden of accountability is not proportional and falls on exposed Border States. However, in practice, many of these first-line countries have already ceased to apply the Dublin Regulation and allow migrants to move to secondary destinations in the north or west of the EU. Currently, Germany and Sweden are the countries that have received and have accepted an overwhelming majority of asylum applications in the EU.

Dublin III⁹ entered into force in July 2013 and contains sound procedures for the protection of asylum seekers and improves the efficiency of the system by:

- An early warning, training and crisis management mechanism aimed at addressing the causes of national asylum system failures or emerging challenges.
- A number of provisions on the protection of applicants, such as mandatory personal interviews, minor safeguards (including a detailed description of the factors that should underpin the assessment of the child's interests), and extended possibilities for reunion with their relatives.
- The possibility of appealing to suspend the execution of transfers during the period in which this appeal is being considered, together with guaranteeing the right for a person to remain in the territory until a court decision has been ruled on the suspension of the transfer during the appeal.
 - Obligation to provide legal assistance free of charge on request.
 - There is a single reason for retention in case of the risk of running away; strict limitation of retention time.

⁷ Frontex, Annual Risk Analysis, 2013.

⁸ Council Regulation (EC) No 343/2003 of 18 February 2003.

⁹ Regulation (EU) No. 604/2013 (Dublin III Regulation) replaces Regulation (EC) No. 343/2003.

- The possibility for some asylum seekers who might in some cases be considered as illegal and be returned under the Return Directive to be treated under the Dublin procedure – thus giving them more protection than the Return Directive.

- Obligation to guarantee the right to challenge a transfer decision.

There is more clarity of procedures between Member States – such as comprehensive and clearer deadlines. The entire Dublin procedure cannot take more than 11 months to accept a person or 9 months to send him/her back (except for escape attempts or when a person is being imprisoned).

The secondary flows of migrants leaving the first country of entry, clearly violating the Dublin Regulation, have enormously affected the visa-free Schengen area, which removed border controls across twenty-six European countries. Considered to be one of the key achievements of European integration, it has been carefully examined in light of the current influx of migrants and safety concerns¹⁰.

In August 2015, Germany announced that it suspended the Dublin Regulation for Syrian asylum seekers, who effectively stopped deportations of Syrians back to the first European country of entry. This move made by the largest and richest member of the European bloc has been seen as an important gesture of solidarity with access point states¹¹.

Meanwhile, the lack of a coordinated and proportionate EU response to illegal migration in the short and medium term could continue to fuel feelings pushing individual countries to focus on national security to the detriment of international protection. This could turn into closed boundaries, barbed wire fences, and maritime resistance from the policy rule exception.

The large-scale, uncontrolled arrival of migrants and asylum seekers has tried out not only the asylum systems of many Member States but also the Common European Asylum System as a whole. The volume and concentration of arrivals revealed, in particular, the weaknesses of the Dublin system, which states that the Member State responsible for examining an asylum application is the one that constitutes the first point of the illegal entry. For these reasons, the Commission proposes reviewing and replacing current asylum instruments to better manage migration flows

¹⁰ Cracks appeared for the first time in April 2011, when France reintroduced border controls for a brief period in response to the influx of thousands of Tunisian and Libyan refugees from neighboring Italy. Denmark followed the example in May 2011 by reintroducing temporary controls at the common borders with Sweden and Germany.

¹¹ <http://www.dw.com/en/germany-suspends-dublin-rules-for-syrians/a-18671698>.

and provide adequate protection to those in need in line with the approach set out in the European Migration Agenda.

In May 2016, as part of the proposed reform of the Common European Asylum System, the Commission presented a draft proposal to make the Dublin system more transparent and to increase its efficiency while providing a mechanism for managing disproportionate pressure on the asylum systems of the member states¹².

The proposal of the Commission has the following aims:

- to improve the capacity of the system to determine a single member state responsible for examining the application for international protection by removing the cessation of liability clauses and by shortening the time limits for takeover requests and transfers;
- to ensure a fair distribution of responsibility between member states by completing the current system with a corrective allocation mechanism in case of disproportionate pressure;
- to determine abuse and prevent secondary movements by requesting procedural and proportionate material measures in case of non-compliance;
- to protect the interests of asylum seekers: with stronger guarantees for unaccompanied minors and a balanced extension of the definition of family members

At last, the proposals include a solidarity-based solidarity mechanism, which includes a corrective allocation mechanism which takes into account relocation efforts made by a member state to relocate those in need of international protection directly from a third country confirming the importance of efforts to implement legal and safe ways to Europe.

This new system would automatically establish when a country manages a disproportionate number of asylum applications. This would be done by reference to the size and wealth of a country. If a country receives a disproportionate number over this reference (over 150% of the reference), all new applicants in that country will be relocated (irrespective of nationality), once a request for admissibility has been verified throughout the EU until the number requests fall below this level. A Member State also has the option of not taking part in reallocation temporarily. In this case, it will have to pay a solidarity contribution of € 250,000 for each applicant for whom it would otherwise be liable under the correctness mechanism to the member state where the person is reallocated instead.

¹² Comments on the Commission Proposal for a Dublin IV Regulation COM 270/2016

The Asylum Procedures Directive (redrafted)¹³ was adopted by the European Parliament and the Council in 2013 and has been transposed into Member States' national law by July 2015. It repeals Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

The Directive creates a coherent system that ensures that decisions on international protection requests are taken more effectively and more correctly through the following:

- Establish clear rules for filing requests, ensuring that everyone who wants to apply for international protection can do this quickly and efficiently.
- Establish a time limit for examining requests (basically six months in the administrative stage), while ensuring the possibility of accelerating requests presenting a high probability of being unfounded;
 - Training decision-makers and ensuring access to legal assistance;
 - Ensuring adequate support for those in need of special safeguards – e.g. due to age, disability, illness – including by ensuring that they are given sufficient time to participate effectively in the procedure;
 - Ensure clearer rules on appeals addressed to courts or tribunals.

In July 2016, the European Commission presented a proposal for a new Asylum Procedures Regulation¹⁴ aimed at replacing Directive 2013/32/ EU as part of a comprehensive package of proposals for the reform of the Common European Asylum System (CEAS)¹⁵. This proposal aims at establishing a genuinely common international protection procedure that is fair and efficient, while removing the incentives for multiple asylum applications and secondary flows between member states. Establishing a genuinely common international protection procedure within the EU means:

- Replacing current member states' disparate procedures with a simpler and clearer procedure with shorter but reasonable time limits for accessing the procedure by applicants and completing the examination of applications both at the administrative and appeal stage.
 - Procedural safeguards that protect the rights of applicants, including ensuring adequate and timely information, hearing in a personal interview, legal assistance, interpretation and free representation.
 - More attention to vulnerable individuals with special procedural needs such as unaccompanied minors.

¹³ Directive 2013/32 / EU, published in the Official Journal of the EU 180/2013.

¹⁴ COM(2016) 467 final 2016/0224 (COD) Brussels, 13.7.2016.

¹⁵ Available at http://europa.eu/rapid/press-release_IP-16-1246.

- Stricter rules to prevent system abuse, sanctioning intentional abuse, and removing incentives for secondary flows, by establishing clear obligations for applicants to cooperate with competent authorities throughout the procedure, and by applying strict consequences in the event of non-compliance.

- A mandatory list of reasons on which an examination should be accelerated, including the application of concepts of safe third country and the first country of asylum.

- Harmonized rules on safe countries. The Commission proposes a gradual move towards full harmonization in this area and the replacement of national lists of safe countries with Union names.

Efforts made by all member states to strengthen policymaking in the field help to manage migration more effectively, improve internal security in the EU and protect the principle of free movement of persons.

Conclusion

The policy measures at EU and Member State level to manage the current migration situation are significant and address very sensitive issues from the point of view of fundamental rights. These involve actions that – if not done properly – can lead to serious violations of fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union (EU Charter). Efforts by all Member States to strengthen policymaking in the field help to manage migration more effectively, improve internal security in the EU and protect the principle of free movement of persons. The elaboration of the invoked policies must mainly concern issues related to the status of migrants, institutional specificity and national specificity.

REFERENCES

- [1] Crăcană Mihaela, Marcel Căpățână, *Free movement of persons, goods, services and capital*, Ed. Tritonic, București, 2007.
- [2] D. S. Massey, *Economic Development and International Migration in Comparative Perspective*, Population and Development Review, vol. **14**, no. 3, 1988.
- [3] Münz, R., *Europe: population and migration in 2005*, Migration Information Source (1 June 2006).
- [4] Münz, R., *Migration, labour markets and integration of migrants: an overview for Europe*, Hamburg, Hamburg Institute of International Economics, 2007.
- [5] *World Migration Managing Labour Mobility in the evolving global economy*, volume 4, World Migration Report Series, 2013.

