

European Commission initiative – New Pact on Migration and Asylum

Feedback from ASGI (Association for Legal Studies on Immigration)

About ASGI:

ASGI (Association for Legal Studies on Immigration) is an independent Italian association, founded in 1990, that brings together lawyers, academics and legal scholars, consultants and civil society representatives in order to address at various levels the rights of asylum seekers, refugees and migrants. ASGI has more than 400 members and is active and present at local, regional and national levels all over Italy.

In general terms, ASGI is mainly active in the field of immigration, statelessness, asylum, citizenship and discrimination on ethnic and religious grounds. Within these fields, ASGI's main mission is (1) to promote information, training and research, (2) to formulate proposals for legislation and policy changes and promote advocacy, (3) to provide legal advice and promote strategic litigation and (4) to cooperate with other organizations at national, European and international level.

Introduction:

In the last years, migration has not been considered within EU immigration and asylum policies as a structural and potentially positive phenomenon, but rather as a "crisis" factor that destabilises the EU. Migrants as such are considered far too often as a danger and the narrative of migration, as a factor that rather undermines the well-being and security of European citizens, has been strengthened.

These perspectives have been condensed into policies focusing mainly on fighting against "irregular migration" through strengthening police and military interventions at the EU's external and internal borders or by intensifying cooperation with countries of origin or transit on this issue. But contrary to what has been announced, policies to contain the so-called irregular flows have not been accompanied by the opening of regular migration channels to allow a better control of migration flows and to ensure that people in need of protection are not trapped in dangerous situations or returned to places where they are subjected to persecution or torture and inhuman and degrading treatment.

In fact, the measures adopted by the EU and its Member States in the last five years related to asylum and migration have actually further aggravated the situation of those trying to reach the EU. As striking examples for this, the agreements signed by EU Member States with Turkey and Libya have to be highlighted. In addition, the EU has strategically changed the focus of classical development tools (for example with the introductions in 2015 of the "European Union Emergency Trust Fund for Africa - EUTF"), by shifting the attention of development aid programmes to the support of migration control mechanisms in countries of origin and transit. The conditionality of providing development support has furthermore also been used in order to "convince" countries of origin/transit to sign readmission agreements aimed at simplifying return procedures. These policy measures provided the financial and logistical backing for the implementation of migration control mechanisms, which often increased in reality the risk for migrants being detained arbitrarily or to experience torture and abuse.

In addition, it has to be highlighted that the control of external borders has been assumed by the European institutions as the essential requirement for the preservation of the Schengen acquis and the free movement of all citizens beyond internal borders. Nevertheless, these declarations are contradicted by the progressive

closure of European internal borders, justified by the fight against secondary movements and implemented through the suspension of Schengen (by some Member States) even for very long periods of time.

The European Border and Coast Guard Agency (FRONTEX), reformed through Regulation 1896/2019, has increasingly taken on a strategic role, becoming an actor with powers linked to the management of external and internal border controls within the Union, but also within third countries. Significant concerns have risen over the respect of human rights, access to asylum procedures, respect of non-refoulement principle in the frame of FRONTEX and national Border guards operations. These concerns are strengthened due to the lack of accountability and control mechanism to monitor the activities of the Agency.

The policies implemented by the different Member States have gone in the same direction. The system of “Hotspot centres”, established in Italy and Greece, has led in practice to an increase of arbitrary forms of detention of foreign citizens. These centres indeed became a sort of testing laboratories for the EU and its Member States, where accelerated procedures, border practices, admissibility and readmission procedures etc. have been tested. Without being effective in terms of migration management, most of these procedures led in reality to a diminution of migrants'/asylum seekers' rights.

One of the main problems was also that the so-called “Dublin System” failed to be an adequate tool to channel the inflow of asylum seekers, which contributed to the fact that the European asylum system became an imbalanced burden for only a few Member States. In the face of the inability to find an agreement for the necessary reform of the “Dublin System”, forms of redistribution of foreign citizens between Member States have been experimented such as the so-called relocation from Italy and Greece in 2016 and 2017 and, in the last two years, the ad hoc redistribution agreements. Unfortunately, this led in practice even to a further division instead of becoming a tool to increase the much-needed solidarity amongst EU Member States.

By sharing what is expressed in particular by ECRE, RRE, RSA - Pro Asyl and PICUM in their responses to this consultation, ASGI wants to highlight the need for the New Pact on Immigration and Asylum to mark a change of direction towards a more positive and rights-based approach of migration and asylum. The New Pact indeed represents an important opportunity to review European migration policies of the recent years in the light of a rigorous and transparent analysis of the outcomes of the measures adopted so far and with the aim to strengthen the Common European Asylum System, ensuring its effective implementation and safeguarding migrants' rights and freedoms. It furthermore should also take note and provide a general frame for some good practices, which Member States have used during this very particular time of COVID 19, such as providing an extension of residence permits, implementing regularisations, releasing migrants from immigration detention or providing access to enhanced social protection tools (see for more details PICUM's position).

While ASGI very much hopes that the New Pact will mark a new starting point for the EU Immigration and asylum policies, it wishes to underline already the ambiguity of the Road Map presented by the Commission. The language used in the consultation document is inspired by the same focus and philosophy as used – without much success - in the last years. Instead of focusing on “the fight against irregular migration” and the externalisation of borders, Europe should adopt a much more positive and rights-based approach towards migration/asylum! The criminalisation of migrants/asylum seekers also begins by the language used in policy and legal documents at all levels.

Concrete proposals:

ASGI hopes for this New Pact to:

- 1) **Favour transparent and equal cooperation with third countries.** Cooperation with third countries – whether they are countries of origins or transit countries – is important in order to help coordinating migration flows. The EU should use this cooperation in order to open safe entry channels for foreign citizens and to enhance migration in its role as a vector of development. On the contrary, the EU should suspend any form of cooperation with third countries aimed at containing migration flows through coercive systems. It is also necessary to avoid any forms of "migration control conditionality" when it comes to development aid programmes, as it risks to undermine the efficiency of these tools for the development of the given third countries. Finally, the New Pact should **refrain from further externalising European asylum and migration responsibilities to third countries.**
- 2) **Increase the possibilities of regular entry and stay in Europe.** Europe should implement an adequate visa policy (including for family and work across different skills levels) and should facilitate access to the territory of the European Union for those who have been forced to leave their area of origin not only because of individual persecution, risks of serious harm and conflict situations but also because of the protracted crisis situation or the absence of minimum conditions of survival due to rapid or slow onset of climate or environmental changes. In addition, any European policy measure should move away from the focus on channelling people either into international protection or return procedure. **It should furthermore encourage the use of regularisations schemes.** Not only within the times of COVID, many Member States have adopted regularisation schemes aiming at regularising individuals on a number of different grounds. These measures are widely recognised as an effective policy tool to address rising numbers of undocumented immigrants, regulate underground labour markets, or for humanitarian purposes.
- 3) **Guarantee a rights-based and transparent management of European internal and external borders.** European borders are not and will never be closed like the Berlin Wall was. Displaced people traveling through those borders are rights-holders and have notably the right to apply for asylum and to be protected against refoulement, inhumane and degrading treatment and arbitrary detention. The Members States' and the European Border and Coast Guard Agency's accountability for their border practices should be increased. Border guards and border agencies (such as also Frontex) should have clear and transparent mandates, which should also foresee clear and easy-to-use democratic controls and reviews mechanisms (such as a full functioning complaint mechanism or a full access to information about their rules and activities).
- 4) **Prepare European search and rescue operations at sea.** While it is important that also the EU and its Member States invest in a state funded search and rescue operation at sea, it is equally important that they cease any policy of criminalising NGOs involved in SAR operations and obstructing their work. Clear mechanisms for cooperation between institutions and NGOs need to be established in order to ensure that people rescued by civil society organisations land immediately in the nearest European safe harbour.
- 5) **Guarantee foreign nationals full and effective access to international protection procedures.** The use of accelerated procedures at the borders should be suspended as they involve an inadequate assessment of protection applications. In addition, the EU should avoid the application of the safe third country and the safe country of origin concepts as they may lead to an automatic decision of inadmissibility in the absence of the necessary case-by-case assessment of requests for international protection. Both concepts lead to a serious limitation of access to international protection.
- 6) **Ensure full right for effective remedies for international protection applicants at all levels.** In particular, it is important to ensure that appeals against the rejection of an asylum application

have always suspensive effect, avoiding as such accelerated return procedures for denied asylum seekers, which would seriously undermine the effectiveness of the legal remedies.

- 7) **Strengthen the full and harmonised implementation of the Common European Asylum System.** The main focus should be given to the full implementation of the standards for reception systems and asylum procedures. The adequate assessment of protection needs should be ensured by - for example - enhancing trainings for the personnel involved in the asylum reception and procedure. The use of detention, both at the stage of determining responsibility for examining the asylum application and at the stage of examining the application for international protection, should be avoided at any circumstances.
- 8) **End or at least fundamentally reform the “Dublin system”.** The “Dublin System” has been subject of criticism since the very beginning. In short, it achieves very little at very high costs both for the protection of asylum seekers and for the functioning of the Common European Asylum System. It is therefore fundamental to at least reform the system in order to establish finally a reliable and systematic solidarity mechanism that guarantees asylum seekers’ rights and provides Member States with a framework for fair sharing of responsibilities. Such a reform of the Dublin III Regulation (regulation 604/2013/EU) should take due account of the needs and wishes of asylum seekers as well as family, cultural and other links in order to ensure effective sharing of responsibility between Member States, to facilitate the implementation of asylum seekers' migration projects and to avoid unnecessary secondary movements.
- 9) **Ensuring the full functioning of the Schengen system.** Member States should be refrained from using the temporary reintroduction of internal border controls, bilateral readmission and police cooperation agreements. Such practices are often contrary to European standards and in violation of the right to asylum.
- 10) **Guarantee the freedom of movement of protection holders.** In a fully implemented Common European Asylum System it is important to guarantee also the mutual recognition of positive decisions. In addition, the full respect for the right to private and family life should be ensured, by enhancing family ties and allowing family reunification.