

## **A European Comprehensive Migration Strategy**

### **An approach based on border protection instead of allocation mechanism**

#### **Concept of Hungary**

#### ***I. Situation analysis***

The European Council reiterated several times in the past two years its long standing position that regaining full control over the external borders and stemming the illegal migration flows are prerequisites to addressing the migration crisis. Last October, the European Council was determined to consolidate its comprehensive and pragmatic approach towards the external aspects of migration, entailing the basic concept of “stemming the flow” of the migrants. In addition to that we are convinced that many other elements based on a joint action pursued by Member States and EU institutions are yielding results. These measures should be continued, entailing the following: (1) hotspots outside the EU; (2) full control over the external borders; (3) effective return policy; (4) comprehensive agreement with 3rd countries (Migration Compacts based on more for more, less for less principle); (5) return to a normal functioning of the Schengen area without internal border control on the basis of the full control over the external borders. It is time now to turn into concrete actions and implement the migration strategy adopted by the European Council. Our paper attempts to achieve this goal.

#### ***II. Measures***

##### **A) Preventing an exceptional migration situation**

**1. The basic objective of Europe's comprehensive migration strategy should be Europe's security. Accordingly, the most important elements and the clear starting points are: (1) regaining the full control over external borders; (2) to stop the illegal influx; (3) expulsion of persons from the territory of the EU who are not eligible for international protection. The fulfilment of these objectives is a prerequisite of stemming the migration pressure on Europe, and the security of the European Union. In order to maintain the security and in order to stop the pull-factor of inflows, the separation of persons in need of international protection and non-refugees (economic migrants) shall be carried out outside the EU in closed "hotspots" before their first entry into the territory of the EU. The provisions of the Geneva Convention's concept of protection shall be applied while separating refugees and illegal migrants.**

➤ *The European Council, in accordance with its previous conclusions, continuously follows the full and non-discriminatory implementation of the EU-Turkey Statement, the Malta Declaration and the Partnership Framework in all its aspects, and – if necessary – gives political guidance or calls for actions and contribution in order to facilitate the implementation of the external dimension of the Union migration policy. The European Council should enhance its monitoring of the implementation.*

**2. While the protection of the external borders remains the responsibility of the Member States, the EU and the Member States need to make greater financial and human**

**resources contributions to the further development of the European Border and Coast Guard Agency, in order to create adequate living conditions in hotspots created in transit zones.**

- *The amendment of the Regulation (EU) 2016/1624 on the European Border and Coast Guard is necessary that joint operations organised by Frontex should not be limited to common border sections with a Member State on the territory of a third country (see our proposal for amendment in the Annex).*
- *The European Council shall be continuously informed about the operationalisation of the European Border and Coast Guard and other agencies in connection with the control of external borders. In case of necessity, the European Council gives guidance on increasing support, financially and with other means, in order that the European Border and Coast Guard Agency could carry out its tasks. The guidance should include the volume and terms of the necessary contribution of the Member States (see our proposal for amendment in the Annex).*

**3. Only those persons having lodged an asylum claim shall enter from the outside hotspots to the territory of the EU - by voluntary resettlement, following their full security screening – who do not originate from a safe third country or have not transited through a safe third country, and who are entitled to protection in accordance with Geneva Convention, and who are subject to voluntary reception by one Member State.**

- *The Council's mandate should be reinforced to achieve consistency with the above concept; the principle of voluntary participation shall fully prevail during the negotiation with the co-legislator, in accordance with the Council's general approach.*

**4. An agreement should be reached soon on the EU list of safe third countries and countries of origin, maintaining the national lists. All EU countries and EU candidate countries should be qualified as safe third countries.**

- *The modifications of APR is necessary to reach the purpose of the proposed concept.*

**5. If, on the basis of the procedures in external closed hotspots, it is established that the person is not eligible for refugee status, that person shall be returned without delay to his or her country of origin or to a third country that he or she indicates and is willing to accept him or her.**

- *The amendment of the Regulation (EU) 2016/1624 on the European Border and Coast Guard is necessary that Frontex should be able to provide operational support for competent authorities in third countries on the field of compulsory return from hot spots outside of the EU (see our proposal for amendment in the Annex).*

**6. Readmission agreements should be concluded with countries of origin and countries of transit. The European Council, the European Commission and the Member States should make appropriate efforts to encourage these processes that have already begun. Its forms are as follows: visa policy, development policy, trade policy and the use of the "more for more / less for less" principle.**

- *Further readmission agreements with the countries of origin and transit - on EU and bilateral level are needed, as well as enforcing the conclusion and effective implementation of such agreements through visa, economic, development and other policies, in order to facilitate returning from the EU's external borders and the EU. EU political support for third countries with external hotspots is necessary to conclude readmission agreements with the transit and countries of origin.*
- *The European Council shall be continuously informed about the effectiveness of return. In case of necessity, the European Council determines those policy areas, where the principle of "more for more / less for less" should be applied. The Council and the Commission shall continuously monitor the outcomes and effectiveness of the use of the principle. The European Council gives additional guidance, whenever necessary.*

**7. For addressing the root causes of migration, the EU should continue to provide effective assistance (financial and other support) in order to secure neighbouring regions of the EU to avoid tensions at its borders, which could lead to fleeing their inhabitants. In order to prevent to approach the external borders of the EU these regions should be assisted. There is a need to establish of a single, independent fund for external border protection and focusing of the external aspects of migration in the next financial period (MFF after 2020).**

- *In addition to the long-term objectives pursued by the traditional policies laid down in the Treaty, external border protection, security, defense capacity building and addressing the root causes of migration should be also priorities. The European Council gives additional guidance, whenever necessary.*

**8. The protection of the EU's external borders is the responsibility of the Member States. To ensure this, the Member States may request support, which support shall be provided.**

- *The European Border and Coast Guard Agency and the Commission shall regularly report to the Council and the European Council on the situation at the external borders. The European Council shall assess in every 6 months the situation of external border control, and defines the directions of measures in order to ensure the maintenance or improvement of the protection of the external borders.*

**9. In case a Member State is unable to stem the extraordinary migratory pressure at the EU's external border; that Member State shall request the support of the EU and other Member States. In case of a request, the EU shall launch common actions in situations requiring urgent intervention to ensure the impermeability of borders by illegal migrants. For this, the possibility of using the Rapid Border Intervention Team (FRONTEX) should be ensured. The unit should, if necessary, intervene in the short time with adequate staff and technical equipment to assist the border control of the Member State at the external borders of the Member State under extreme pressure.**

- *The European Border and Coast Guard Agency and the Commission shall regularly report to the Council and the European Council on the simulation exercises of the rapid intervention teams, including analyses on the identified needs and shortcomings. As necessary, the European Council gives guidance with regard to the framework of a legislative proposal. In case of crisis, the European Border and Coast Guard Agency and*

*the Commission shall regularly report to the Council and the European Council on the situation at the external borders.*

**B) Measures to be taken in case of exceptional circumstances**

**1. Even in case of the most thorough preparatory and pre-emptive measures, such crisis situations can occur when a particular Member State has to face an extraordinary migratory pressure.**

**If the particular Member State cannot fulfil their obligations related to the protection of external borders and as a result, a large number of illegal migrants could enter the territory of the EU, then this Member State can immediately (at latest within 48 hours) ask the support of other Member States or the European Border and Coast Guard Agency to protect its borders jointly. If the Member State requests this assistance and support, then, within the frame of an extraordinary Council meeting or written procedure in 48 hours, the Council decides upon the joint deployment of instruments and personnel, including the necessary financial resources. The protective measures in this case are controlled by the Member State concerned, organized jointly by the European Border and Coast Guard Agency and executed collectively by the Member States. This may occur as long as the particular Member State requests the functioning of the international unit or when the Council supporting this view upholds and does not announce the termination of the emergency situation.**

➤ *The proposal requires amendments to Article 17 of the Regulation to the deployment of rapid reaction pool where a Member State is unable to prevent the extraordinary migratory pressure on the EU's external border alone and this threatens with large inward mixed migratory flows.*

**2. During the joint protective measures, every asylum-seeker shall be received at the particular Member State's external borders affected by the influx. Their applications shall be examined in external hotspots created at these borders. The asylum-seekers shall stay until the final decision of their application in these areas, with conditions and reception requirements provided in accordance with the Geneva Convention. Only that person can enter the EU, whose asylum application has a positive outcome.**

➤ *The proposal can be incorporated in the draft proposal of Dublin IV under the new Chapter on the crisis situation.*

**3. If a Member State is unable to protect its borders, but does not request assistance from the EU or does not avail itself to the offered assistance and thus, jeopardizes the functioning of the Schengen Area, the Council shall, as a matter of urgency, decide upon the further actions regarding the given Member State. Regarding the Member State of the Schengen Area the Council shall as a matter of urgency, within 48 hours in the frame of an extraordinary Council meeting or written procedure decide upon the suspension of Schengen membership.**

**If a large number of illegal migrants successfully enter the territory of the EU, then these persons shall be returned to the closed hotspots created at the external border sections of the suspended Member State.**

**A decision about the announcement of the existence or the termination such a crisis situation can be proposed by any member of the Council and before its adoption, the affected Member State shall be heard.**

**Under such circumstances, the suspended Member State shall do all the measures to return to the adequate application of the Schengen system as soon as possible.**

- *According to the current legislation, based on Article 29 of the Schengen Borders Code the Council may, as a last resort and as a measure to protect the common interests within the area without internal border control recommend to reintroduce border control at all or at specific parts of the internal borders of the Member States.*
- *According to the concept, mainly procedural rules should be amended in Article 19 of the EBCG Regulation and Article 29 and 30 of the SBC Regulation.*

**4. A Member State outside the Schengen Area is entitled to the assistance of the EU during a crisis situation. If the Member State does not avail itself to it, the Member State shall take back all illegal migrants, who left its territory and entered the territory of other Member States. The Member State can ask for EU assistance for the placement and reception of the returnees. The amount of the assistance provided shall be decided by the Commission.**

- *The proposal regarding the responsibility of a Member State outside the Schengen Area is incorporated in the draft proposal of Dublin IV (see our proposal for amendment in the Annex).*

**5. A future system also has to be based on the principle, which states that the Member State of first entry is responsible for carrying out asylum procedures. The responsibility of this Member State remains even when its Schengen membership is suspended on the basis of the Council's decision.**

- *The proposal is incorporated in the draft proposal of Dublin IV (see our proposal for amendment in the Annex).*

### **III. Migration and asylum agenda**

**The reform of the Common European Asylum System will be successful if the expectations which we intend to build the future asylum system on are formulated at the level of Heads of State and Government. The measures described above shall be adopted and implemented consistently so that the EU could handle a future migration pressure of any extent, while at the same time - preserving its major achievements - it could ensure the free movement of EU citizens. As long as these measures are not adequately implemented, there is a risk – which as a matter of fact is the current situation – that migration policy would be compounded with asylum policy and consequentially the EU will not be able to prevent abuse on the asylum system.**

**In our position, the question of asylum and the asylum policy itself should be conceptually separated from immigration policy, including economic migration as well. Such a future asylum system – of which an adequate border protection is a key element – should also take into account the fact that not all Member States contribute equally to**

**the common burden sharing. Accordingly, a distinction shall be made among (1) the Member States of first entry (“frontline Member States”), (2) and Member States with no significant external borders, (3) and the ones that have significant external Schengen borders but are mostly affected by the migratory pressure because of insufficient protection of the borders in frontline Member States, therefore cannot be regarded as Member States of first entry. In the establishment of the future asylum system the efforts made to protect the external borders should be acknowledged in all cases: both in normal circumstances and in times of crises.**

➤ *The proposal is incorporated in the draft proposal of Dublin IV in the new chapter on the crisis situation (see our proposal for amendment in the Annex).*

**It is our firm understanding that a comprehensive, border protection-based asylum system should be developed with the aforementioned elements. Without a comprehensive strategy, results cannot be expected from agreement on specific elements. Some of these elements however, reach beyond the current dossiers of the Common European Asylum System. We still believe that without reaching a prior consensus on long-term strategy that contains the above elements, the fine-tuning of the ineffective and dysfunctional asylum system currently in force – lacking the commonly accepted principles – cannot be successful.**