1st meeting of the EUROPEAN MIGRATION FORUM

Safe routes, safe futures. How to manage the mixed flows of migrants across the Mediterranean?

Brussels, EESC building, rue Belliard 99-101 (room JDE 62)

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BACKGROUND PAPER

The six years that have passed since the creation of the European Integration Forum have demonstrated how fruitful it is for the EU to engage in a dialogue and exchange with civil society on an important subject such as migration. Given the success of the European Integration Forum, it was decided to expand its scope to cover topics related to immigration and asylum, also beyond the integration aspect, where a discussion with civil society would bring direct and local perspectives to policy making.

The EU is strongly committed to address the challenges of migration and of the situation in the Mediterranean region in particular. As President Juncker took office, it was clear that these issues were going to be on top of the new European Commission's agenda. One of the Commission strategic initiatives for 2015 will be the adoption of a European Agenda on Migration, with the aim of better managing legal migration – ensuring that the EU becomes an attractive destination for talents and skills - and at the same time addressing irregular migration and smuggling in a more effective way, while offering protection to all those in need. As the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos stated on the occasion of International Migrants Day[1] *"Many Member States are facing labour and skills shortages in key sectors. In this decade alone, the EU's working age population will decline by 15 million. Therefore, we need legal ways for non EU-citizens to come to Europe for work or study. Immigration must become an integral part of a more comprehensive EU-wide approach for addressing labour market and socio-economic challenges in Europe. Moreover, legal migration and integration policies go hand in hand with our efforts to protect those in need and to address irregular migration*".

Managing migration flows from the Mediterranean has been particularly challenging in the past two years, given the impressing numbers of persons trying to reach Europe through the Mediterranean Sea. In 2014, 228.662 arrivals occurred, compared to the 76.449 of the previous year. This means a 277% increase compared to 2013 in the central Mediterranean

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[1] http://europa.eu/rapid/press-release_IP-14-2782_en.htm

route alone (with departures from North African countries such as Tunisia and Libya directed to Southern Italy). Such journeys have predominantly involved Syrians, Eritreans, Afghanis and nationals from Sub-Saharan Africa, with respectively around 73,800, 34,200, 13.200 and over 25.929 migrants[2] reaching the European coasts, reflecting the situation of political instability and unrest in their home countries. The Lampedusa incident of October 2013 was, sadly, only one of the many tragic incidents that took place in the Mediterranean. More than 3.000 causalities are estimated to have occurred in 2014 alone. Such numbers clearly evidence the magnitude of the problem, and explain this focus for the first meeting of the European Migration Forum.

The mixed nature of migration in the Mediterranean, and of all issues linked to it, make it difficult to address it effectively and via transnational governance. In fact, whereas EU and national migration governance policy tools address asylum and migration issues separately, the migration pressure at the Mediterranean border of the EU is composed of both persons seeking international protection and other migrants, including economic migrants and persons looking for a better life. As these two categories take up the same routes, the lines between the different definitions of migrants have become blurred[3]. When left with no other alternative, those seeking international protection take up irregular routes to reach Europe, whilst migrants try to find alternative legal avenues to enter the EU, sometimes also via the asylum procedure, creating significant challenges for the functioning of the Common European Asylum System (CEAS).

Furthermore, the issue is rendered more complex and dramatic by the operation of smugglers who, in well-established criminal transnational networks, seek to facilitate the irregular entry of migrants across borders, using perilous and ruthless ways that put the lives of migrants at risk.

Thus, the mixed nature of migration flows entails a variety of challenges that need to be addressed at multiple levels, and that require a combined action between the public and the private, the local, the national and the communitarian sphere. The problems of the Mediterranean may in fact only be effectively addressed if maximum cooperation and coordination is reached within the multi-layered governance that operates in this field.

During this Forum, discussions will be streamlined in four directions, to ensure that the exchange provides concrete input to feed into the ongoing EU policy making process. The following themes will be dealt with during parallel workshops:

 A. Access to the asylum procedure at the borders;

 B. Integration of beneficiaries of international protection;

 C. A comprehensive approach to countering migrant smuggling;

 D. Providing adequate information in countries of origin and transit.

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[2] Based on provisional Frontex data for 2014

[3] Triandafyllidou A. (2014), 'Mixed Migration Flows and Transnational Governance Networks', a paper for the *Lampedusa Dilemma:global flows and closed borders. What should Europe do?*, 17-18 November, Florence: EUI.

The choice of topics reflects the willingness to address both strands of mixed flows, and to identify the steps necessary to address their respective specificities. At the same time, the topics prioritise on issues that lie within the remit of the EU and which can therefore best be addressed by policies developed at a European level, in close cooperation with Member States, regional and local authorities and all relevant stakeholders.

Workshop A - Access to the asylum procedure at the borders

According to the Schengen Borders Code, border control must be carried out in full respect of fundamental rights and the rights of persons seeking international protection, in particular as regards the principle of *non-refoulement* and effective access to the asylum procedure. To ensure the correct application of the principle of *non-refoulement*, Member States need to have in place an individual procedure which is fair and effective, and which allows them to distinguish persons seeking international protection from other migrants.

With changes that become applicable as of the middle of 2015, the EU legal framework governing access to the international protection procedure at border crossing points has been significantly strengthened. The 2005 Asylum Procedures Directive (APD) lacked clear mandatory provisions on access to the procedure, which made it very difficult to ensure that procedures are easily and equally accessible irrespective of where in the Union an application is made. The 2013 recast of the APD fills this gap by introducing specific requirements for the Member States, in particular with regard to access to the procedure at border crossing points.

In order to ensure a quick and effective access to the procedure, the recast APD establishes a clear distinction between the making and the lodging of applications. While lodging an application is a formal step for which Member States may put in place specific rules (e.g. regarding the manner or the place where the lodging should take place), making an application is the act of expressing, in any way, and to any authority, one's wish to obtain international protection. While it is the 'lodging' of the application that triggers the formal start of the examination procedure, the 'making' of an application nonetheless has important consequences for the rights of the person concerned. In particular, the making of an application triggers *inter alia* the right for the applicant to remain in the territory of the Member States pending at least the first instance examination, and the right of the applicant to benefit from basic material reception conditions, subject to the rules and limitations set in the Reception Conditions Directive.

The recast APD contains specific provisions on the role of "front-line authorities", including border guards, to which applications can be made although they are not competent for deciding on these applications. These authorities should in particular receive training on how to recognise and deal with applications for international protection and instructions to inform applicants as to how and where applications may be lodged. These authorities should also facilitate the 'making' of an application where there are indications that persons present at

border crossing points (or in detention facilities) may wish to apply for international protection, by proactively providing information on the possibility to do so. In line with the case-law of the European Court of Human Rights[4] a group arrival from a specific country of origin of individuals (who are not fully able to communicate sufficiently clearly for requesting protection effectively) could constitute such an 'indication'. Member States must also make arrangements for interpretation, where this is necessary to facilitate access to the procedure. In addition, in view of ensuring that the rights triggered from the making are effective in practice, the recast APD introduces a new obligation for the Member States to register the applications for international protection within prescribed short time limits.

The recast APD also provides that organizations and persons providing advice and counselling to applicants should have effective access to applicants present at border crossing points with a view to providing these services.

Finally, it should be noted that the APD provisions apply only to applications made in the territory of the Member States, including at the border and the transit zones. Effective access to international protection from outside the territory of the Member States in the form of resettlement and humanitarian admission is encouraged through financial incentives under the Asylum, Migration and Integration fund (AMIF).

Questions/topics for discussion:

1. *Participants should be invited to put forward:*

    a) *their experiences of particular problems encountered in ensuring effective access to the asylum procedure at the border;*

    b) *their views on good practices put in place for facilitating access to the procedure at the border;*

    c) *their views on any specific practical measures that could be taken to facilitate the proper application of the strengthened legal framework governing access to the procedure at the border.*

2. *What is the role of NGOs in facilitating access to the procedure at the border, and how could that role be enhanced?*

3. *What are the challenges NGOs are confronted with when it comes to facilitating access to the procedure at the border?*

4. *What specific support can be envisaged in view of facilitating the work of the NGOs in this context?*

5. *How, in general, could cooperation between Member States national authorities and NGOs be enhanced?*

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[4] ECrtHR, case HIRSI JAMAA and others v. Italy, request no 27765/09, judgment of 23 February 2012.

6. Should access to international protection for persons who are outside the EU territory be further strengthened, either through reinforcing resettlement and humanitarian admission, or through exploring complementary forms of access? What could be the role of NGOs in further facilitating access to protection from outside the territory of the Member States?

Workshop B - Integration of beneficiaries of international protection

In the area of integration of third country nationals who are not beneficiaries of international protection in Member States, the EU role is to support and provide incentives to Member States' actions, taking account of national and local specificities. In 2004, the 'Common Basic Principles' have been adopted, constituting a general common framework for integration policy cooperation at the EU level and providing common guidelines to follow. Ten years after their adoption, the Council's Conclusions of June 2014 reinstated their importance and relevance, whilst affirming that further efforts should be spent, with special attention to address the problems of specific groups with particular needs, such as beneficiaries of international protection.

Attention to the specific integration needs of beneficiaries of international protection has been high at the EU level, leading to the adoption of the only Union provisions on integration with the 2004 Qualification Directive, which has been revised and further strengthened in 2011. Within the scope of this directive, a number of rights specifically designed to facilitate the integration of beneficiaries of international protection have been included, taking into account the specific challenges they face because of their previous persecution, flight and exile. Such rights encompass: the issuance of a residence permit; the access to the labour market; the access to training programs, including for upgrading skills, access to counselling services and special attention to recognition of qualifications and diplomas, including the possible provision of alternative schemes in the absence of documentary evidence; the approximation of most rights between refugee status and subsidiary protection status. These provisions have been developed to ensure that beneficiaries of international protection are not stigmatized as forever in need of special assistance, but that their skills and capacities are recognized, and their potential benefits for the host societies are valued adequately. The added value that beneficiaries of international protection can bring is in fact important and too often disregarded, leading them to largely be an "untapped resource" in European labour markets[5].

Funding has also been an important instrument for the EU to support the development of MS integration strategies and measures. Under the European Integration Fund first, and from now on under the Asylum Migration and Integration Fund, the Commission will continue to prioritise actions in the field of integration, including of beneficiaries of international protection.

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[5] Gathmann C. (2014), 'Asylum Seekers: an Untapped Resource in the European Labour Market?', a paper for the conference *Lampedusa Dilemma: global flows and closed borders. What should Europe do?,* 17-18 November, Florence: EUI.

The integration of beneficiaries of international protection is not only a humanitarian duty that Member States are obliged to fulfil, but if well managed, it may be an important resource that Member States should try to maximize. Very often, however, measures to be taken to facilitate the integration of beneficiaries of international protection do not take account of the situation of persons before they acquire of the status of refugee or of subsidiary protection. While not all asylum seekers will ultimately be given a protection status, many of them will, and it is accordingly desirable to ensure that their treatment during the claim determination stage does not undermine their chances of effective future integration. The EU asylum legislation ensures that applicants have access to adequate housing, food, basic health care, education for minors and access to employment if the first instance procedure last for longer than nine months. Indeed, fair asylum procedures and dignified reception conditions are important for the perception of asylum seekers to be welcomed in the host Member State, which in turn influences their willingness to integrate once recognized. Discussions in this workshop will therefore aim to adopt a wider approach, considering both periods, i.e. prior to and after refugee status or subsidiary protection have been granted.

Questions/topics for discussion:

1. *In what ways are beneficiaries of international protection in need of special attention in the process of integration?*

2. *What are the main drivers for their successful integration? How can these conditions be created and maximized?*

3. *What risks are there in considering asylum seekers and refugees only as people in need of care and protection?*

4. *What positive impact may beneficiaries of international protection have in European societies and labour markets?*

5. *Regional and Local Authorities have very often a more direct knowledge of integration challenges than the central administrations. What could be done to improve the flow of information between both levels of government? How to better promote multilevel governance?*

6. *Resettlement and Integration Programmes are probably more efficient and successful if foreseen ex ante. Regional And Local Authorities are not yet sufficiently involved in the design of these types of programmes. What could be better done? With what type of resources?*

7. *Some Member States have a very recent experience of inflows of people seeking international protection, and have not yet developed a proper national integration strategy to respond to this new element of migration. How can we help facilitate the transfer of knowledge and the mutual learning? How can good practice examples be identified and shared across the EU for the benefit of all stakeholders involved?*

WORKSHOP C- A comprehensive approach to counter migrant smuggling

Unavailability or limited access to legal channels for migrants and asylum seekers, combined with situations of harsh poverty and/or social and political instability in their countries, can push people to seek the services of criminals who intentionally facilitate their unauthorised entry, transit or residence into the EU, that is, migrant smuggling.

Smuggling is an increasingly violent and dangerous crime, which can put the lives of vulnerable persons seeking to reach Europe in danger and expose them to gross violations of their most basic human rights. The dramatic situation in the Mediterranean Sea as regards smuggling of migrants has prompted the need to tackle the criminal networks facilitating irregular immigration more effectively as an EU priority, as recalled by the European Commissioner for Migration, Home Affairs and Citizenship Avramopoulos, who referred to the need to step up our criminal justice response with the aim of eradicating this phenomenon, while guaranteeing full respect of international human rights standards, including the EU Charter of Fundamental Rights[6].

Accordingly, in 2015 the European Commission will develop, in the context of the European Agenda for Migration, a European comprehensive approach to counter migrant smuggling and assess the need to review the existing EU legal framework. The new strategy will focus, on the one hand, on dismantling criminal networks through reinforced intelligence gathering, investigation capacities and prosecution and, on the other hand, on prevention, through enhanced cooperation with third countries and information campaigns about the dangers of migrant smuggling as well as clamping down demand for undeclared work.

Undocumented migrants who reach Europe but are not entitled to receive protection or cannot legalise their stay, are often turning to criminals who facilitate their irregular stay, exposing themselves to exploitative working and living conditions. The full implementation of relevant EU instruments like the Employers Sanctions Directive or the expansion of Directive 2004/81 on residence permits to victims of trafficking, who cooperate with the authorities, to also cover smuggled persons, can contribute to address this problem. Civil society organisations bear an important role in empowering and supporting migrants' rights as well as in engaging with diasporas and communities in countries of origin and transit.

Whether in the process of undertaking a perilous journey or once they have reached their destination, irregular migrants go through life-threatening and stressful situations. Whilst clamping down on smugglers remains a priority, this cannot come at the expense of the civil society that operates only on grounds of humanitarian duties, whether assisting migrants at sea in line with the obligations set by the international law of the sea or offering vital help during their period of (irregular) stay in the EU.

Within a context of blurred boundaries, the distinction between smuggling and trafficking in human beings can become unclear. Smuggling of migrants can be confused with or even referred to as "trafficking", leading to uncertainty in how best to ensure the protection of

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[6] http://europa.eu/rapid/press-release_SPEECH-14-1601_en.htm

vulnerable persons and the effective investigation and prosecution of those committing these crimes. However, smuggling represents means by which migrants willingly seek facilitation to enter or reside in the territory irregularly, whilst trafficking does not require the crossing of international borders and involves as a goal the exploitation of victims in a variety of ways.

This workshop is designed to allow for a critical discussion enriched by specific, regional and local expertise so as to develop an original input for the policy work of the EU to develop a strategy to counter migrant smuggling.

Questions/topics for discussion:

1. *What is the role of civil society to contribute to the prevention of migrant smuggling in countries of destination, origin and transit? How can migrants' organisations and the diaspora be involved in this process?*

2. *How can it be ensured that the current EU legislative framework does not risk criminalizing humanitarian assistance carried out by the civil society to migrants in need? What are the different legal and practical challenges concerning the international law obligation to assist migrants in distress at sea and other types of humanitarian assistance to undocumented migrants? What are concrete examples at national and local level?*

3. *What can the role of civil society be in cooperating with the relevant national authorities, such as labour inspectors, the judicial and law enforcement authorities to dismantle criminal networks of smugglers?*

4. *How can cases of smuggling and trafficking of non-EU citizens be best addressed? To what extent do smuggling and trafficking overlap? What challenges does this present for the NGOs dealing with such cases?*

Workshop D – Providing adequate information in countries of origin and transit

When starvation, persecution and war lead migrants to leave their home and take up irregular migration channels, desperation is often stronger than any other risk involved in the journey itself. Before starting their migration process, potential migrants may be provided with fragmented, partial and indirect information. This inevitably alters their ability to make a responsible and informed decision as to whether to take up a very perilous irregular migration route. Studies and projects show that even those migrants that succeed in the journey still bear the scars of it in a very significant way, often leading them to reach out to family, friends, and their community at home inviting them not to follow their same path. This is why further attention should be paid to shaping, developing and implementing information campaigns that target communities in countries of origin and of transit, presenting fact and figures on the risks associated with irregular journeys towards Europe, with the final aim of empowering individuals to take better informed decisions regarding their migratory experience. When carrying out such campaigns the messages that are transmitted need to be

carefully balanced, not discouraging persons fleeing conflicts and persecution to seek for protection, but directly informing them about the existing risks and possibilities.

This workshop aims at facilitating an exchange of ideas, knowledge and practices on what messages may more easily come across and which channels prove to be more effective, in full respect of the dignity of migrants and of their right to seek international protection.

Questions/topics for discussion:

1. *What message should be transmitted to communities of origin and transit as regards the risks of irregular migration journeys? How can diasporas been involved in this process?*

2. *How may origin countries be better involved in this process? What actors should be involved in reaching out to local communities, in order to ensure a degree of trust?*

3. *What channels of communication are more likely to be effective? In particular, given the recurrence of smugglers to advertise irregular journeys via social media channels, how can such information be marginalised by using the same channels in a more strategic way?*

4. *What is the role to be played by Local and Regional Authorities? Are there examples of existing good cooperation between LRA from origin and destination countries? How could this cooperation be put in place?*