

EPSU Briefing on migration plans in Juncker's State of the Union Address 2018

Brussels, 18 September 2018

In his State of the Union Address of 12 September, Commission President Juncker presented three new proposals on EU migration and asylum policy.

The proposals are supposed to provide a concrete contribution to the EU leaders' informal summit in Salzburg on 19-20 September.

They refer to some of the elements put forward by the Commission last July in its non-papers on controlled centres and disembarkation arrangements, which EPSU criticised, see [here](#).

The Commission is not proposing a new approach. The choice of legal instruments and amount of EU funding confirm the strong emphasis on a security-based approach to migration, rather than a rational, human rights-based one. EPSU reiterates its position against the detention of migrants and against the privatization of both detention and reception facilities, which is riddled with serious abuses of human and workers' rights, see [here](#).

Which are the new proposals?

Announced as the 'last elements needed for a compromise on migration and border reform,' they include:

- [A proposal for a Regulation on the European Border and Coast Guard](#) and [Annex](#)¹;
- [An amended proposal for a Regulation on the EU Agency for Asylum](#)²;
- [A draft proposal for a Directive on common standards and procedures in member states for returning illegally staying third-country nationals \(recast\)](#) and [Annex](#);
- [A communication on enhancing legal pathways to Europe](#);
- [A report on the evaluation of the European Border Surveillance System \(EUROSUR\)](#).

1.Regulation on the European Border and Coast Guard/Frontex:

As in 2015, the stated objective remains to strengthen the European Border and Coast Guard (to note "Frontex" is not explicitly mentioned) as follows (see [EC press release](#)):

- A standing corps of 10,000 operational staff by 2020, see EPSU briefing of last June Summit [here](#).
- Executive powers: Under the authority and control of the member state to which they are deployed, members of the EU Border and Coast Guard standing corps will be able to carry out tasks requiring executive powers such as identity checks, authorising or refusing entry at the external borders, and intercepting people at the border in order to ensure their full operational effectiveness.
- More support on return: In addition to organising and financing joint return operations, the Agency will now also be able to support return procedures in member states, for example by identifying irregularly staying non-EU nationals, acquiring travel documents and preparing return decisions for national authorities, who remain responsible for taking the actual return decisions. To EPSU, this point does not seem new.
- Stronger cooperation with non-EU countries: The Agency will be able – subject to prior agreement of the country concerned – to launch joint operations and deploy staff outside the EU, beyond countries neighbouring the EU. This point is new and likely

¹ Repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council.

² Repealing Regulation No 439/2010.

linked to the above mentioned Commission's non-papers on controlled centres and disembarkation platforms/arrangements.

- Increased financial means: The total cost of the proposed upgrade of the European Border and Coast Guard amounts to €1.3 billion for 2019-2020. Under the next EU budget period 2021-2027, a total of €11.3 billion is proposed. This had already been proposed in the context of the EU seven years budget, as explained in our [briefing](#).

This significantly increases the competence and mandate of Frontex, which are not matched by a similar increase of fundamental rights safeguards or parliamentary control and scrutiny, including for instance the use of surveillance drones (for which it is unclear which EU regulatory framework applies). There are new provisions on technical and operation assistance to both member states and third countries in support of search and rescue operations at sea.

2. Regulation on the EU Agency for Asylum:

The Commission proposes to reinforce the Asylum Agency. It is unclear whether the acronym will remain the same, EASO, which is currently under the EU Ombudsman's scrutiny in relation to the agency's involvement in one of the hotspots based in Greece.

Key points of the proposed regulation are:

- Full operational support on asylum procedures: The Agency's support teams will be available to provide the full range of support activities, including by carrying out the entire "administrative stage" of the asylum procedure. To EPSU, this point does not seem to be new in the context of the hotspots.
- Joint EU migration management teams will support member states when needed and requested, including in hotspots and "controlled centres" for which no more details are available. Composed of experts from Frontex, EASO and Europol, the teams will be coordinated by the Commission. Under the authority of the host member state, they will carry out all tasks necessary to receive arrivals, distinguish between persons in need of protection and those who do not, and carry out asylum and return procedures. This is similar to the Commission's non-paper on controlled centres.
- Increased financial means: To ensure the Agency can carry out its increased tasks, the Commission proposes a budget of €321 million for the period 2019-2020 and €1.25 billion for the period 2021-2027. EPSU highlights again that this is not new, as it was already proposed in the seven years budget. In addition, it reflects a huge discrepancy when compared to the above mentioned budget of Frontex.

It is reminded that EPSU calls for a public evaluation of the EU-backed hotspot approach in consultation with public service employees, their trade union representatives, as well as migrants/asylum-seekers themselves, before any further deployment either in or outside the EU.

This is urgently needed as recent [reports](#) found that the hotspots in Greece are overcrowded and unfit for humans – 8,300 refugees and migrants are currently in Moria, more than double its 3,100-person capacity.

3. Directive on common standards and procedures in member states for returning illegally staying third-country nationals (recast) / the Return Directive:

Key points of the directive are:

- A new border procedure: Persons whose asylum applications have been rejected during border procedures will be channeled directly towards a simplified return procedure, with no period for voluntary departure and shorter time limits for appeals (5 days). EPSU outlines that it is unclear whether the people rejected during the initial screening will have their right to a due procedure of their asylum application upheld and respected.

Furthermore, the Commission states that “appeals will be limited to only one level of judicial remedy [and] member states will be able to restrict the suspensive effect of appeals against return decisions where there is no risk of breaching the principle of *non-refoulement*.”³ The “return decisions can be quickly adopted and fully enforced at the border and in controlled centres.”⁴ In its latest briefings, EPSU expressed strong concerns regarding fast-track asylum procedures and controlled centres.

- Clear procedures and rules to prevent abuses: To avoid delays, return decisions will have to be issued immediately after or together with a decision ending the legal stay. Common timelines of a maximum of 5 days will apply for appeals to return decisions in the case of rejected asylum seekers and an obligation to cooperate for persons subject to a return procedure will be introduced, including on identity verification and to obtain travel documents. EPSU is concerned about the speed limit imposed through the new proposal, that is likely to be compatible with asylum-seekers' right to a due process.
- Efficient voluntary returns: To promote voluntary returns and enhance financial and practical support, member states will have to set up voluntary return programmes. At the same time, member states will be able to shorten the period granted for voluntary return, for example to prevent absconding.
- Clear rules on detention: Common criteria to determine the risk of absconding, one of the determining factors for whether detention would be justified, will help ensure a more efficient use of detention during return procedures in full respect of fundamental rights. To better reflect the period of time needed to successfully carry out returns, and provided the conditions for the need to make use of detention are met, member states should allow for an initial detention period of not less than 3 months. In addition, member states will now also be able to detain persons subject to a return decision who pose a threat to public order or national security. EPSU has a policy against detention.
- Member states will be able to impose an entry ban on a non-EU national exiting the EU when they find that the person had been staying irregularly in the EU. This will prevent future irregular migration and dissuade prolonged irregular stay.

4. Communication on enhancing legal pathways to Europe:

Key points of the Communication, none of which are new and legally binding:

- New EU Blue Card: The Commission encourages Council to adopt quickly the revised EU Blue card directive (2016) to attract more highly-skilled workers to the EU and improve EU's competitiveness, not the least in relation to the USA.
- Resettlement: the Commission encourages member states to step up delivery on their commitment to resettle 50,000 persons in need of international protection by October 2019. To ensure fully coordinated efforts in the long term, an agreement should be found on the Commission proposal from 2016 for a Union Resettlement Framework.
- Cooperation with third countries: the Commission encourages member states to strengthen cooperation with non-EU countries including by launching pilot projects on legal migration with key African countries by the end of 2018 that can help improve cooperation on overall migration management.

The above is a quick overview. The binding proposals fall short of meeting EPSU's demands for a human rights, solidarity-based approach to migration and asylum. The emphasis on security, detention, return and quick processing of asylum claims is not matched by an equally tough approach to uphold international and European standards on asylum rights.

³ http://europa.eu/rapid/press-release_MEMO-18-5713_en.htm

⁴ http://europa.eu/rapid/press-release_IP-18-5712_en.htm