PROTECTING PEOPLE NOT BORDERS
OBSERVATIONS AND RECOMMENDATIONS ISSUED BY ASGI
ON THEEUROPEAN AGENDA ON MIGRATION

(APPROVED BY THE MEETING OF MEMBERS HELD IN FLORENCE ON JUNE 6, 2015)

Foreword

The European Agenda on migration presented by the European Commission on May 13, 2015 bears innovative features. Ambiguities on important aspects, however, prevail.

A substantive closure on legal economic migration in the EU persists: this forces the migration fluxes toward irregular entry channels or the request for international protection, with subsequent negative effects on the European asylum system.

The Agenda shows awareness that migration is an ordinary fact in the life and history of European societies and that migration flows have deep political, economic, and environmental causes. This awareness, however, has not been translated neither in structural and effective EU interventions in countries of origin (whose stability and economic, political and environmental security do appear to be insufficient), neither in indications of instruments for the ordinary, non-emergency management of migration flows, including those for political, economic or environmental reasons, whereas migrating from some countries is the only mean to survive.

Even though in a rather vague fashion, the Agenda contains a reference to options for potential operations of Common Security and Defence Policy (CSDP), with the aim to fight criminal networks of smugglers. Apart from the cautious diplomatic language used, the reference to a possible military intervention in Libya is clear. This would be a wicked option as, in addition to worsen the general situation of a war-torn country, it would have adverse consequences on the conditions of migrants themselves, who would become both direct victims of military operations and indirect victims by reasons of the humanitarian crisis arising from the conflict. It must not be forgotten that the life of migrants in Libya is worth nothing and that such migrants are not currently (and would be even less so during or after the military operation) protected by international organizations operating outside Libya.

ANALYSIS OF MAIN PROPOSALS

1) The proposal about the relocation of asylum seekers from one country to another within the EU is positive but it is necessary to:

1.1 Better detail the general preconditions for the relocation, defining the circumstances in which it is possible to consider that one or more European Countries are the recipient of migration flows that are higher than their effective capacity to provide efficient reception;

1.2. Foresee that the quotas of asylum seekers to be transferred are adequate to provide an effective answer to the difficult situation faced by States who are recipient of significant flows of asylum seekers;

1.3. Clearly elicit that relocation must take into consideration the individual will of those concerned and the presence of family members in other European States, ensuring the right to introduce effective judicial appeals against any decisions on relocation;

1.4 Consider the need not to relocate asylum seekers in those Member States (EU) that do not offer effective reception and protection such as Greece, or whose capacity to guarantee adequate standards of access to asylum procedures is critical, as it is the case in Bulgaria, Romania and Hungary.

2) The proposal to **resettle within the EU those potential asylum seekers who are in non-EU States** is positive but the following points are needed :

2.1. Within the pilot phase, quotas of persons to be resettled within the EU should be larger than those foreseen in the Agenda: the need that all EU Member States and the EU itself adopt the resettlement policy must be emphasised, so as to significantly lighten the burden of those areas where there are significant concentrations of displaced persons fleeing wars, who are currently in countries who are more fragile than EU States, such as Lebanon and Jordan. Over there, the implosion could provoke other and more serious conflicts which would cause a higher number of people to flee;

2.2. To establish a fast-track mechanism [rapid-reaction mechanism functional] to adjust resettlement programmes, so as to quickly respond to the worsening of crisis and to enable an effective response to requests of international protection coming from individual in situation of extreme need of protection and present in third-countries (outside EU);

2.3. To strengthen, not as a replacement but as a support to resettlement programmes, recourse to the possibility (already foreseen by various legal instruments of the Union but applied in a very limited and episodic fashion, and in any case not by all EU States) that diplomatic and consular representations of Member States and EU representations present in third countries of origin or transit, grant entry visa for humanitarian reasons, agreeing on the application of a non-exhaustive list of cases (for instance the entry of family members and relatives, entry for health reason, etc.) so as to limit the discretion of diplomatic and consular representations of Member States;

2.4. To enforce Directive 2001/55/EC that foresees common norms to all EU Member States on minimum standards for giving temporary protection in the event of a mass influx of displaced persons with respect to the flight from Syria that, under all aspects, corresponds to what is foreseen by the Directive itself: that is immediate and transitory protection of displaced persons who cannot return to their country of origin due to war, violence or human rights violations. This would ensure a balance of efforts between EU Member States in receiving such persons and bearing the consequences thereof.

3) **Common asylum and border policies** should be modified:

3.1. As the right to asylum forms part of the constitutional traditions of Member States and is foreseen by the Charter of Fundamental Rights of the European Union, it is necessary to broaden the possibilities of legal entry of those individuals wishing to apply for asylum. This would allow to overcome the current situation whereby the only way of access to international protection in the EU is through irregular entries.

3.2. Prohibition of refoulement of all those wishing to introduce a request for asylum must be enforced at external and internal land, air and sea borders, including transit zones, of the Union.

Supervision on the compliance of the *non-refoulement* principle, including the prohibition of collective expulsions, foreseen by the Protocols to the ECHR must be ensured through the adoption of the needed by-laws and the introduction of independent monitoring procedures;

3.3. Rejection rate of asylum requests amongst Member States is unreasonably variable: as a result, the same asylum request could leave to opposite results in different EU States. This is a clear indication of the shortcomings of Directive 2011/95/EU on standards for the qualification of third-country nationals as beneficiaries of international protection, which entitles Member States to adopt too many discretionary clauses; there is a need of a new merge of the EU Directive on the qualification of subsidiary protection, so as to establish consistent standards on the recognition of refugee status, as well as to enlarge the protection to widespread and grave breach of human rights, including extreme poverty and environmental disasters in the countries of origin or source countries. Moreover, violence suffered in transit countries by applicants for international protection have to be considered when assessing their request.

3.4. It is also of utmost importance to proceed to a new recast of Directive 2013/33/EU laying down standards for the reception of applicants for international protection providing for truly uniform reception and social integration measures that Member States have to provide. The wide disparity of the measures supporting social integration of the beneficiaries of international protection (who, in certain Member States, are virtually non-existent) undermines any serious attempt to harmonize the right of asylum in Europe;

3.5. It is required to promptly start the procedure for the coming into force of the EU legislation which regulates mutual recognition of decisions granting international protection between Member States, including the possibility of transfer of the beneficiary of international protection into another EU Member State. This should be true, at least if family members (extended family definition) live in that other Member State, as well as in the event of work opportunity where the holder of protection should have the possibility to look for and stabilize any employment contacts and therefore be able to establish an employment relationship;

3.6. An immediate start should be given to a serious process of overcoming the Dublin Regulation III, as it is an instrument deeply unfair to asylum seekers, as well as totally ineffective in achieving the distribution of the treatment of asylum applications throughout the EU (as already demonstrated by many studies); meanwhile it is required, under current legislation, to agree upon criteria and procedures for wider application of humanitarian considerations with particular attention to cases involving the presence of family members (extended family definition) of applicants located in another EU country, as well as people in vulnerable situations;

3.7. Still pending the overcoming of the Dublin Regulation III, it is necessary that the European Commission approve a new Regulation implementing the existing regulation to speed up procedures to ensure family reunification of asylum seekers with family members located in other EU countries and also with other family members or cohabiting.

4) The recommendation contained in the European Agenda to adopt new guidelines, which facilitate regular entries preventing irregular ones and providing greater measures of social cohesion in order to preclude the expansion of xenophobia, is certainly positive. However, concrete measures indicated in the Agenda appear overly vague and little innovative; it is necessary and urgent to adopt a new realistic approach that overcomes the rigidity and the current barriers to allow an easy and convenient access of regular entry channels. In this context it is necessary:

4.1. To exclude any verifications of the unavailability of nationals and EU workers or of foreign workers already residents before issuing new working permits;

4.2. To promote projects of temporary migration which will not hinder but foster migration individual programs where you can alternate between periods of work and professional

experiences in the EU with periods of return to the country of origin; to do this the establishment, even on an experimental basis, of agreements on free movement of people (for example EU agreements with the Community of West African States) is necessary;

4.3. To introduce the possibility of regular entries for job research, under established conditions which take into account the migration movements preventing migrants from using criminal organizations dealing with human trafficking (smuggling).

4.4. To expand and simplify the regulation of entry and stay of foreigners, which means releasing the EU Blue Card for highly skilled workers and granting access to unqualified workers as well. In implementing migration policies, it is necessary to avoid policies applying a logic of selective immigration and brains appropriation which would deprive States of origin of high skilled staff.

4.5. To fully implement the measures provided for in Directive 2009/52/EC in order to protect more effectively the foreign workers employed illegally and to combat situations of exploitation, as well as reducing slavery;

4.6. To allow the permutation of short term stays for work permits giving a real possibility for migrants to establish a viable employment relationship at the end of the short term work permit;

4.7. To introduce in the various EU Member States, a legislation which allows the establishment of residency in case of illegal entry or the possibility to recover the previous condition of regularity, often lost because of economic difficulties, especially where there is a clear right to family reunification or where migrants have real working opportunities;

4.8. To effectively implement the directive on people trafficking, including the proper identification of victims of trafficking and the issuance of a residence permit on humanitarian grounds to the victims;

4.9 To establish the European touring visa proposed by the European Commission in 2014, so that the visa can be released in the country of origin or in transit to European representation offices on site and, when agreed, issued such visa for job searching;

4.10 To strengthen programmes and cultural initiatives to support social cohesion and counteract the hostile propaganda against migrants and hatred or incitement to racist or xenophobic activities.

5) **ASGI ultimately believes that some measures indicated in the Agenda and other EU documents should be rejected** for the following reasons:

5.1. The establishment of one or more "pilot multi-purpose centre" of potential migrants in Niger, with obvious direct or indirect involvement of the State of Niger himself, appears an unacceptable proposal because of the absence of adequate safeguards in that State that migrants are not subject to abuse, discriminatory treatments and violence of various nature other than that of the general absence of a democratic order. The problem does not only concern Niger but obviously takes a much broader importance: despite the protection of human rights, promoting pluralist democracy and consolidating the rule of law are among the fundamental objectives of the European Union and their promotion is constituent to all forms of cooperation with third countries, including development cooperation (Article 181A of the Treaty establishing the European Community (EC)). These statements of principles are often contradicted in practice due to a clear consensus shared in the Union about the refusal to grant European funds on the control and management of migration flows to countries that do not have a legal democratic system and in which the existence of situations of extensive violations of fundamental rights to the citizens and migrants who are in their territory is widely documented by international sources.

5.2. The growing emphasis on tough measures against irregular immigration at ports, airports and inland borders crossings, where large resources are injected, is likely to have an effect on the deterioration of the current dramatic situation of violence and subjugation faced by migrants from criminal organizations, as opposed to the fight against organized crime. Criminal organizations must be fought in the field of legislative policy choices where efforts should be directed at increasing the possibilities for legal access to the EU territory.

5.3. The increasing criminalization of all types of travel from irregular migrants appears unacceptable without distinguishing the conduct of those who, non-profit and for a variety of reasons (for example the existence of family ties or friendship) directly or indirectly facilitates the journey of an irregular migrant or even that of a refugee from the phenomena of human smuggling and trafficking run by organized crime. A random criminalization has the effect of inhibiting or otherwise obstructing (often through the use of explicit or veiled threats of criminal prosecution) the completion of initiatives of solidarity and rescue operations for migrants that where put in place by individuals, associations and institutions whose ethical impulse to act in favour of the weakest should, on the contrary, be valued as an authentic expression of the fundamental values of the European Union.

5.4. The use of force to make the fingerprinted on migrants should be considered a dangerous and unacceptable practice. The emphasis on this issue as part of the Agenda is likely, in fact, to legitimize the spread of serious forms of ill-treatment of asylum seekers across Europe. It should be noted, also, that the Italian legislation does not give the authority to the public safety authorities to use other forms of physical coercion to compel a person to submit to fingerprinted. The use of force in this context has to be considered illegal and subject to prosecution.

5.5. The idea to apply manifestly unfounded grounds to refugee claims on the sole ground that a migrant refused fingerprinted cannot be accepted. In fact, this result is contrary to the existing EU law : Member States may consider an application as manifestly unfounded when proper authority has established on merits that the applicant does not qualify for international protection under the Directive 2011/95/EU.

5.6. If EASO, as an office of support to national authorities and deciding asylum outcomes, can play a positive role, the presence of EASO officials directly alongside to national decision makers when deciding on applications for asylum is not an acceptable choice. The lack of full harmonization between EU Member States regarding the criteria for examining applications for international protection (see paragraph 3.3 on whether or not to reform the Directive on the qualification of subsidiary protection) makes it appropriate for EASO to limit its intervention, at this stage, to detailed information and reliable information resulting from a plurality of sources about the situation of the countries of origin, without any interferences (or without interfering) into the decision making process of each refugee claim, sole jurisdiction of the competent administrative or judicial bodies of each State.