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Discussion Paper

Session 3. An EU response to
extraordinary migratory situations

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The Commission's Communication on a New Pact on Migration and Asylum, presented on 23 September 2020, began with the following quote:

'We will take a human and humane approach. Saving lives at sea is not optional. And those countries who fulfil their legal and moral duties or are more exposed than others, must be able to rely on the solidarity of our whole European Union... Everybody has to step up here and take responsibility.' (President von der Leyen, State of the Union Address 2020)

Since then, Member States have managed to make good progress on the Council's position, which has been agreed on for the key legislative files of the Pact. However, much work remains to be done to reach an agreement on those files with the European Parliament and to adopt our position on asylum and migration in extraordinary situations.

It is to be noted that in the Pact, the 'extraordinary' nature of a situation is often assessed on the basis of the impact of the movements on our countries of destination.

There is no doubt about the extraordinary nature of the situations created by mass influxes of people, whether they occur on a one-off basis or over a longer period of time. However, there are other situations which, without necessarily involving large numbers of people, take on an extraordinary dimension, either because of their seriousness or because of the human drama they entail.

Throughout the years of debate on the Pact on Migration and Asylum, it has become clear that, unlike with other dossiers, there is a strong consensus on the value of the external migratory dimension as a policy to be followed in order to consolidate partnerships with the main countries of origin and transit, thus helping to reduce, ab initio, critical migratory situations. Without prejudice to further progress in this type of international cooperation – making it more effective, better financed, more politically supported – it is clear that the Pact must offer legal solutions at internal level, including to situations of an extraordinary nature.

The EU must provide a political and legal response to both ordinary and extraordinary migration situations, the latter of which are becoming more frequent and more divisive, as the debates of recent years have shown. Consequently, the Pact on Migration and Asylum has to respond to these objectives.

A number of rules in the Pact directly or indirectly regulate such extraordinary situations.



In the Asylum Procedure Regulation, 'ordinary' situations are those taken as a reference for determining the adequate capacity of each Member State and, directly related to this, the maximum annual number of applications examined through the border procedure.

In the Asylum and Migration Management Regulation (AMMR), 'extraordinary' situations are those referred to as 'risk of migratory pressure', 'migratory pressure' and 'significant migratory situation', which are used as a basis for determining both the solidarity contributions and its distribution.

Extraordinary migratory situations are, however, chiefly dealt with in the Regulation addressing situations of crisis and force majeure in the field of migration and asylum. According to the orientation given by SCIFA at its informal meeting on 20-21 April in Stockholm under the Swedish Presidency, the proposal now includes provisions on instrumentalization, abandons the repeal of the Temporary Protection Directive and its replacement with an immediate protection status, includes a 'menu' of derogations tailored to each type of situation and provides for a robust activation mechanism.

The Crisis Regulation essentially provides for two types of measures for dealing with extraordinary situations:

1. More streamlined and/or flexible asylum and return procedures, without undermining fundamental rights.
2. Solidarity with the Member States.

The Crisis Regulation is therefore essential for at least three reasons. First, to regulate the vast majority of extraordinary migratory situations (i.e., those not governed by AMMR). Second, to complete the Pact with a regulation that strikes the right balance between responsibility and solidarity for this type of situation. Finally, because we have committed to the European Parliament to making progress on all elements of the Pact in accordance with a joint roadmap.

At the same time, however, the very nature of extraordinary situations means that they will often take the form of unforeseen events. There will be cases where the European response may require ad hoc action by the Council, as we have already experienced in previous years. As far as possible, the future Pact should provide for better formulas that increase the predictability of the response to be adopted, thereby avoiding vagueness and delays.

Questions for delegations

1. How can the external dimension of migration contribute to the prevention of extraordinary crisis situations, and what do ministers think the EU needs to do to ensure that this external dimension is effective, robust and sustainable over time?
2. Do ministers agree that the interinstitutional negotiations on the Crisis Regulation should be launched before the end of the summer, while ensuring efficient progress on the ongoing negotiations on the other legislative proposals of the Pact?