



## CEAR VIRTUAL SESSION

**Session: “Challenges and opportunities of the new European Pact on Migration and Asylum”**

**Date: 24 SEPTEMBER 2020**

**Place: VoiceBoxer virtual platform (with simultaneous interpretation to English and French)**

- 12:00 -12:15 - Estrella Galán (CEAR Secretary-General): Welcome and acknowledgements.
- 12:15 -12:35 - Étienne de Perier (Spanish Representation of the European Commission).
- 12:35 -13:00 - Miguel García-Herráiz (Subdirector-General of Justice and Home Affairs - Spanish Ministry of Foreign Affairs, European Union and Cooperation).
- 13:00 - 13:20 - Marta García (UNHCR Protection Officer)
- 13:20 - 13:30 - Closing – Estrella Galán - CEAR.
- 13:30 - 14h - Round of questions and debate.

On 23 September 2020, the European Commission published the New Pact on Migration and Asylum, announcing several proposals for reform of the EU migration and asylum policy that are aimed at offering a ‘fresh start’ and remedying the deficiencies and challenges identified since 2015. To draft the Pact, the European Commission launched a round of consultation with Member States. The Pact will be debated by the European Parliament and the Council.

This session was intended to stimulate a debate on the challenges and opportunities of the New Pact on Migration and Asylum and to encourage reflection on Spain’s potential contribution in the field of migration and asylum, while giving voice to its citizens and civil society to discuss the future of Europe in this respect.

### **ESTRELLA GALÁN – CEAR Secretary-General**

Estrella Galán began by welcoming and thanking everyone, and underscoring that the New Pact on Migration and Asylum has come late. She thanked the State Secretary for the European Union of the Ministry of Foreign Affairs, European Union and Cooperation for financing this session with the aim of disseminating one of the strategic lines of the Conference on the Future of Europe: migration and asylum



policies. The Conference is expected to be held over two years and intends to give voice to the civil society regarding some key EU issues.

Special thanks were expressed to the speakers: Étienne de Perier from the European Commission, Miguel García-Herráiz from the State Secretary for the European Union and Marta García from the UNHCR Representation in Spain. They embody three qualified opinions on the Pact from different points of view: Europe, Spain and the United Nations.

Regarding CEAR's approach to the New Pact, Estrella Galán stressed that the Pact could have been a great opportunity for the common asylum and migration policy and to ensure the right to asylum by putting people and human rights at the centre, thus contributing to an inclusive and multicultural Europe. However, it has turned out to be a new setback from CEAR's perspective. What looked like an opportunity to ensure the principle of solidarity and responsibility has in turn resulted in an *à la carte* menu for States to choose what they wish to do. This has come as a surprise and a disappointment. In this New Pact, the countries with the most intransigent and harsh positions have yet again won the battle, increasing the externalisation of policies and the shielding of Europe and putting the protection of individuals on the back burner. This creates a situation in which we all lose.

### **Étienne de Perier - Spanish Representation of the European Commission**

Étienne de Perier began his intervention by mentioning that, though it is still early to analyse the Pact in detail, we should definitely start debating its proposals.

The 2015-2016 migration crisis revealed important deficiencies in the EU asylum system but also served to show the complexity of a phenomenon that affects each European State differently.

The EU needs a framework to manage the decisions of Member States and to provide responses tailored to normal and emergency situations.

Our challenges have changed since 2015. We are now faced with mixed flows of migrants and refugees. This increases the complexity of our response and requires genuine solidarity and responsibility from Member States.

The European system has design deficiencies and inconsistencies among national systems, both for asylum and return. We need a framework of legal certainty. This is not a new topic: between 2016 and 2018, the Commission presented several proposals for reform of the system.

These proposals offer a new approach, but sustaining the progress already made, based on the commitments that were previously reached by the European Parliament and the Council.

The new approach aims to ensure a common, balanced framework based on three principles:

- No Member State should shoulder a disproportionate responsibility and all Member States should show and contribute to solidarity.
- It is a comprehensive model that addresses all areas involved in the matter: migration, asylum, integration and border management
- Development of relations with third countries: addressing the root causes of irregular migration, combatting migrant smuggling and supporting well-managed legal migration are objectives that can only be pursued through close partnerships with third countries.

This is a much wider approach than the reforms that were presented until now. The proposals are listed as follows:

- Establishing a procedure at the border to accelerate the decision-making process, comprising pre-entry screening, an asylum procedure and, where applicable, a swift return procedure.

This screening is a preliminary assessment that will include identification, health and security checks, fingerprinting and registration in the Eurodac database. The screening will ensure fast identification of the correct procedure applicable to a person entering the EU without fulfilling the entry conditions. It should be carried out over a maximum period of 5 days. Faster identification of the right procedure should help to manage the applications for international protection and vulnerable people requiring special assistance. After the screening, special asylum and return procedures have been included. These procedures apply if an asylum seeker is a national of countries with low recognition rates for international protection, if their claim is abusive or if they pose a threat to national security. In all other cases, the normal asylum procedure will apply. The border procedure will not apply to unaccompanied children and families with children under the age of 12. The deadline for examining claims under the asylum border procedure should not exceed 12 weeks. The duration of the return border procedure is also limited to 12 weeks. The goal is to accelerate decision-making. Moreover, there will be specific controls and guarantees of an individual assessment and compliance with the principle of *non-refoulement*. To do so, Member States will have to set up a monitoring mechanism and work with the FRA. The Pact considers that this reform will also ensure protection of migrant children. The new rules will guarantee that the best interest of the child are the primary consideration in decision-making. All asylum systems must grant specific guarantees to children.

# (R)

- The second key element is ensuring a fair sharing of responsibility and solidarity among Member States. The sharing of responsibility and the difficulties in ensuring solidarity among European countries have always been problematic in the EU. The Pact acknowledges the need to go beyond the Dublin Regulation and proposes to replace it by a new Asylum and Migration Management Regulation. This would expand the criteria to determine which State is responsible for asylum applications. Such criteria include the best interest of the child, the scenario where a family member might already be in a Member State or have a diploma issued by an educational institution of another Member State. If none of those four criteria can be applied, the Member State of entry shall be responsible for examining the application.

Moreover, the Pact offers new tools to help the States that are enduring greater migratory pressure: a solidarity mechanism to guarantee that all Member States do their part. The two main components are relocation and 'return sponsorship'. Under this new concept, a Member State commits to support returns from another State and, if after 8 months the efforts are not successful, to transfer the persons concerned to their own country in order to continue the return procedure. It must be pointed out that this is a flexible system, because Member States will be able to decide whether they wish to contribute through relocation, return, or both, or if they would rather contribute through capacity building. However, it is also important to emphasise that all countries will have to contribute to alleviate the migratory pressure of a Member State. The system provides for specific solidarity measures related to search and rescue at sea: voluntary contributions to relocation that each Member State will have to report every year. This solidarity mechanism will be subject to a situation of migratory pressure or risk of pressure. The Commission will assess the pressure or risk of pressure situation in a comprehensive manner with no quantitative threshold, but using instead a holistic assessment that includes the number of asylum applications, search and rescue cases, irregular border crossings, the geopolitical situation, etc. This mechanism uses a distribution key to calculate each Member State's fair share of solidarity contributions based on the size of its population and its total GDP, taking into account its past efforts and the number of asylum applications they receive. The system is complex, but ensures the contribution of all Member States.

- Another challenge is improving governance. There are common standards on responsibility regarding the assessment of asylum applications, processing claims and reception of applicants. However, many pieces are still missing: there is no common strategy or contingency plan, and there are many gaps in national systems. European standards are implemented in an incomplete manner, which leads to Member States using different practices. Better governance is key to strengthen mutual trust. The Pact proposes a system of governance based on an EU strategy on Asylum and Migration Management and on national strategies to be drawn up by each Member State. The implementation of existing and new rules will be important, too. This will be done

through the Schengen evaluation mechanism or through agencies, such as the FRA, that will contribute to monitor the implementation of the rules. Every year, the Commission will publish a migration management report setting out the expected migratory situation. Additionally, the Commission will be able to issue recommendations with specific support measures.

- The Pact sets out a reinforced return system. Currently, only about a third of people with a removal order actually leave. This erodes trust in the whole system and exposes those staying illegally to precarious conditions and exploitation. The main building block of the European return system is the Return Directive. The recast of this Directive would bring key improvements in the management of return policy. Moreover, there is a close link between asylum and return, whereby a return order must be issued simultaneously with a negative asylum decision, speeding up the system. Frontex will play a leading role in supporting Member States. For this purpose, a Director will be appointed within Frontex. Likewise, the Commission will appoint a Return Coordinator, supported by a new High Level Network for Return to facilitate the exchange of information between European countries. The Pact underlines voluntary returns as an integral component and the preferred option. In 2021, a new strategy on voluntary returns and reintegration will be presented.

In order to be effective, return procedures require close cooperation with countries of origin and transit. This also applies to reintegration. The EU aims to create partnerships with third countries. The Commission will assess at least once a year the level of cooperation between the EU and third countries, which may identify measures to improve cooperation in this area.

- Moreover, the Pact aims at having a crisis preparedness and response system. Although the EU is better prepared today than it was in 2015, there is room for improvement: each crisis needs a different type of response. A new crisis management plan will be drafted along with a series of protocols and financial measures to ensure preparedness. The goal is to monitor the EU migratory situation to enhance planning and preparedness. In the event of a crisis, this tool will function in full coherence with existing EU crisis management mechanisms, such as the Civil Protection Mechanism.

- Étienne de Perier emphasised that enhancing the migratory management policy entails an improvement in border management. Under the new Pact, border management would become more modern and effective. Border management is essential for the correct functioning of the Schengen area. Since 2015, the gaps and differences between national asylum and return schemes have weakened the Schengen system, and this was aggravated by the lack of coordination between states during the COVID crisis, compromising the single market. Many of the measures of the new Pact are aimed at strengthening Schengen. Additionally, in 2021 the Commission



will present a strategy on internal borders. The FRONTEX standing corps is scheduled for deployment in 2021.

As part of border management, the Pact also includes several measures related to SAR (search and rescue). The responsibility of these operations lies mainly with the Member States, but rescue at sea activities are a key component of European border management. The goal is to foster cooperation between Member States and gain clarity. Cooperation must be promoted not only among Member States, but also among private entities and organisations. The new Asylum and Migration Management Regulation will include a more predictable solidarity mechanism for disembarkation, replacing the existing *ad hoc* mechanism implemented by the Commission in January 2019, which has allowed for almost 2,000 resettlements. The Commission has issued two recommendations: one regarding rescue at sea operations and cooperation with private entities, and the other intended to prevent criminalisation of humanitarian actors, recalling that the EU Directive on the facilitation of unauthorised entry prevents the criminalisation of humanitarian facilitation.

-The Pact also includes measures for working with international partners. Migration is a global reality, and it will remain a global challenge for the years to come. Migration policies that work well are in the interest of countries of origin, transit and destination, and refugees and migrants themselves. The goal of the Pact is to create comprehensive, balanced and tailor-made partnerships with countries of origin and transit. The concept of mutual benefit is a key element in the Pact. Partnerships must be based on an assessment of the interests of the EU and partner countries. When speaking about international cooperation, funding is indispensable. In July 2020 the European Council underlined that this must be developed further (9M since 2015) and in a more coordinated manner in programmes across the relevant headings of the EU budget. Migration is treated as a priority in the Commission's proposal for the next Multiannual Financial Framework. The next Neighbourhood Instrument (NDICI) foresees a 10 % target for migration and migration governance related actions.

-With regard to legal migration, the Pact establishes that, in addition to the need to reduce irregular migration, it is also essential to develop legal pathways, as well as to show solidarity with third countries hosting refugees. The resettlement work done in recent years should be further scaled up. The EU intends to confirm its global lead on resettlement. It is working on legal pathways linked to labour market needs. New plans could be implemented to meet the needs of employers and launch talent partnerships, starting in the EU's Neighbourhood and African countries, with a view to expanding to other regions. The goal is to combine direct support for mobility schemes for work or training with capacity building in home countries, vocational education and training, integration of returning migrants, and diaspora mobilisation. It will be complemented by programmes to attract talent and reduce shortages in specific sectors in Europe,



such as health and agriculture. This is already in place: in 2018, Member States issued 750,000 residence permits, but we can and must do more. Étienne de Perier recalled that the EU is losing the global race for talent. Therefore, it is important to complete the unfinished work of reforming the EU Blue Card Directive, to attract highly skilled talent. The Commission has recently launched a public consultation on attracting skills and talent to identify additional areas of improvement and finding new ideas.

-Integration is an essential part of any successful migratory policy. We must ensure that everyone who is legally in the EU can contribute to the prosperity and cohesion of European societies. The Commission will adopt an Action Plan on integration and inclusion for 2021-2024. The integration of migrants and their families will be a key aspect of this.

To conclude, Étienne de Perier insisted on the comprehensive approach of the Pact. Bringing policies together is essential to provide results and requires a strong legal framework with clear rules for those in need of international protection and those who do not have the right to stay. These clear rules will also promote mutual trust. The comprehensive approach of the New Pact, built on consultations undertaken by the Commission, is the result of a balance of interests and needs. It requires the support of all in order to succeed.

**MIGUEL GARCÍA-HERRÁIZ - Subdirector-General of Justice and Home Affairs - Spanish Ministry of Foreign Affairs, European Union and Cooperation**

Miguel García-Herráiz began his intervention by mentioning the obvious relation between the Conference on the Future of Europe, the New Pact on Migration and Asylum, and Schengen. He recalled that Commissioner Schinas, when presenting the Pact, stated that the EU's economic area has been reinforced by last summer's agreements on recovery and resilience, while the Schengen acquis, the Common Migration Policy, and the Common European Asylum System have been awaiting an agreement for four years, since the 2015-2016 negotiations. Closing this gap and implementing a legal framework is an obligation and responsibility of the EU and all Member States. Regarding the Conference on the Future of Europe: Spain has a strong interest in bringing it forward. It will address issues such as artificial intelligence, healthcare, digital economy and mobility (within the European and International areas).

There is a growing concern about the Schengen area: the reinforcement of a common migration policy, the strengthening of a common approach to borders, which are common borders on the outside so that our internal borders disappear. The existing link between displacement to the interior and internal movements goes to show the

importance of a comprehensive approach. Miguel García-Herráiz emphasised that we see ourselves reflected in the President's word when she said that the Pact must be more human and humanitarian, a difficult target to reach, and that, as Estrella Galán mentioned, all Member States need to be ready to compromise in order to achieve it.

In addition, the common policy must reinforce strategy: the link between internal and external mobility shows the need for a comprehensive approach to mobility, which stresses its relation with labour migration and health control (in connection with health crises).

Regarding the Pact itself, it is positive that the Commission has taken time to undertake consultations with all Member States and included other countries and concerned actors. For example, the Commission has held conversations with Turkey and recently visited Tunisia, represented by Italy, or Mauritania, represented by Spanish Ministry Grande Marlaska. Spain strongly values having close contact with these states through the Commissioner's visits, and gaining on-the-ground knowledge of these countries of origin, transit and destination (because North African countries and Turkey are countries of destination, too).

Miguel García-Herráiz explained that the Commission's proposal is somewhat pragmatic, excessively realistic, as Estrella Galán mentioned, a decision to please the countries that are more reluctant to show full solidarity within our common borders. This proposal serves as a common basis for negotiation that will need an in-depth assessment and must suffer many vicissitudes before an agreement is reached. The Commission itself has established a timeframe for what the Pact wishes to accomplish. Spain has approached this negotiation in a constructive manner, since we have always shown solidarity within the EU and with our international partners: Latin America, North Africa and the rest of Africa.

Spain is a Mediterranean country that stands on the front line. The boats arrive on our coasts and we witness the drama of the Mediterranean border crossing. We also assume our solidarity quota. In 2019-2020, Spain was the first country of destination for asylum seekers, coming mainly from Latin American countries. These applications have significantly increased over the past few years and Spain remains a desired destination, pushing the limits of our hosting capacity.

Spain is also notable for its extensive experience in international relations with third countries concerned with the migration issue. Our relations with Morocco have always been a priority from all points of view, not just in the migration field. One of the lessons and tools that Spain wanted to share with the rest of EU countries is the idea that any migration policy must be comprehensive. It needs a comprehensive stance both within the EU and towards the refugees and migrants who arrive at our borders,

and those who stay in neighbouring countries. This also applies to our relations with third countries: we need to prioritise prevention policies in order to avoid uncontrolled migration flows. It is central that we make it possible for the countries of origin and transit (which are increasingly turning into countries of destination) to have the means to integrate immigrant populations and make policies that are respectful of human rights. Such a policy should include legal migration to Europe: there are legal pathways for potential migrants to meet EU labour needs, which still exist despite the COVID crisis, so migrants can avoid having to resort to other ways. Such a comprehensive policy must also address returns, for people who do not fall within any of these categories or whose application has been rejected.

In this sense, it is important to emphasise the external dimension and the need for funding of any successful migration policy. Migratory flows are not going to be resolved only by strengthening borders. Miguel García-Herráiz claims that the EU needs not only to strengthen its borders, but also to harmonise its regulations, and this must be done in conjunction with all European partners and agencies such as Frontex or EASO. This also requires close cooperation, trust and the commitment of all the countries involved in the migration process. This is why the Commission's visits to the countries of origin are so important. They give us a full overview of the hardships that a country like Tunisia has to face during a difficult economic transition that is also forcing its own citizens to become irregular migrants in many European countries.

Moreover, external funding covers a wide range of areas, as seen in the 2015 Valletta Summit, with consequent financial flows giving priority to migration issues and helping migration policy. We draw from the premise that not everything that is done in the countries of origin and transit is necessarily related to migration, but much of what is being done may have an impact on migration, such as women empowerment, employment, resilience, vocational training and education programmes. From the perspective of migration policies, we must support development cooperation but also allocate funds to capacity building in these countries, so they can manage their borders and improve their operational capabilities of coast guard, combat the mafias that benefit from migrant smuggling, and build their own employment and legal migration systems. In doing so, they could become our partners in seasonal migration (circular migration) programmes. Talent requires a counterpart in the countries of origin, and Spain has a great interest in this area. That is the reason for the Neighbourhood Fund and those related to migration and borders (heading 6, which has an external dimension and is more oriented towards operative cooperation).

The Pact is comprehensive not only because it covers a full spectrum of topics, but also because it needs to be seen as a whole. One of the issues to be discussed now is whether certain ideas should be drawn from this comprehensive analysis, whether a political agreement should be reached beforehand, and in what order they should be

approved. It is worth considering whether it makes sense to anticipate the approval of core elements of the Pact when there is not yet agreement on more complex elements. Miguel García-Herráiz concluded by saying that he had taken due note of Estrella Galán's intervention.

### **Marta García — UNHCR Protection Officer in Spain**

Since January, UNHCR has been calling on the EU to focus on a comprehensive approach that strengthens the external dimension while ensuring fair, effective and humane asylum procedures. Emphasis is also placed on the integration and inclusion of refugees in EU countries. In January, UNHCR issued a document setting out a number of recommendations that they considered crucial for the Pact. There is no doubt that we currently have *ad hoc* mechanisms in place for disembarkations in the Mediterranean or in connection with relocation needs. There is a need to find comprehensive, well-organised, predictable mechanisms so that the challenges and opportunities posed by mixed population movements (also outside the EU) can be addressed from a human and humanitarian perspective. This is in the interest of States, refugees and migrants themselves.

The current EU approach is leading us to situations like the one prevailing recently in Greece, where refugees do not get a lasting solution or access to protection at the reception centres managed by the Greek government. UNHCR recommends that the Pact include an effective relocation system, a predictable solidarity mechanism created with a view to protecting people.

Moreover, UNHCR also recommends focusing on the search for mechanisms for fair and effective asylum procedures to identify people's needs. This means that, with the support of expert agencies such as UNHCR, civil society and European agencies, asylum procedures can be designed to identify people quickly, so they have access to a solid and sustainable protection status that allows them to rebuild their lives in the EU.

As presented yesterday by the Commissioner, the Pact has a perspective of balance between border management and compliance with the fundamental right to asylum, which is an international obligation. This is fundamental, because it provides a clear opportunity for the EU to preserve the fundamental right to asylum and the principle of *non-refoulement* established by the Geneva Convention in 1951.

As part of its recommendations, UNHCR asked for a clear position regarding minors, in order to ensure protection standards for unaccompanied children travelling with no relatives. It was recommended to implement quick mechanisms to identify the specific needs of people arriving to the EU. One example is the protection of victims of trafficking for sexual exploitation. It is essential that the Pact provide for these

situations by setting out mechanisms to identify these needs and grant protection as soon as possible.

Regarding asylum systems, UNHCR recommends the implementation of contingency planning mechanisms for extraordinary situations of mass arrivals. We should be able to ensure that these people can be granted access to the territory and swift and predictable relocation within the EU in order to show that solidarity that is so often evoked by Member States.

Another topic that was highlighted in the recommendations for the Pact that UNHCR issued back in January was the strengthening of all EU integration programmes, so that people can be part of a multicultural society such as the European.

Externally, UNHCR expects a reinforcement of the mechanisms for legal and complementary pathways, starting with family reunion, especially with regard to unaccompanied minors entering the EU.

As for resettlement, the document recalls that it should be based on the strategy launched by UNHCR in 2019, which called for the resettlement of 1 million refugees. UNHCR hopes to see these avenues explored and resettlement possibilities increased, and also recalls the possibility of new refugee integration programmes through community “sponsorship” that was mentioned at the press conference. These mechanisms, they claim, are proving very useful in meeting these needs. In Spain, this programme is already in place in the Basque Country, and we will soon implement it in another region. We hope to see this become the new normal for resettlement in Spain.

These were the recommendations made by UNHCR to the EU. UNHCR’s definition of a fair and effective asylum procedure is available on their website. The common denominator is to have a comprehensive approach to the issue, to identify the needs of the vulnerable, to respect human rights in relation to ensuring effective access to international protection, and to co-operate with refugee-generating states in crisis and with neighbouring refugee-hosting countries that also need lasting solutions.

Marta García ended her speech by regretting once again that this debate could not be as accurate and specific as would be desired. She also recalled that we are only now entering the actual road towards the final agreement.

### **Closing – ESTRELLA GALÁN – CEAR**

Thanks to all the participants who have succinctly shared their vision.

CEAR has tried to analyse the announcement of the Pact to the maximum extent possible. We insist that this was an opportunity to achieve a guarantee-based system, but the EU has failed to do so. CEAR had previously identified a number of risks and

opportunities. Regrettably, we now see that all the risks have materialised (and even gone beyond), while the opportunities that the Pact offered have vanished.

The risks mainly consisted in the possibility that a pre-entry screening mechanism applied at the border would undermine the guarantees of the procedure: indeed, these accelerated procedures reduce and impair procedural guarantees. Therefore, this one risk has materialised.

We also feared the risk of continuing to promote agreements with third countries where human rights are not respected, having them assume an excessive burden regarding persons in need of international protection. Again, the risk has materialised as these agreements are fostered.

And, of course, the risk of increasing returns to unsafe countries has yet again been met.

The biggest risk was to continue without legal and safe pathways, without humanitarian visas or systems for people to avoid risking their lives and turning to human smugglers. The Pact does mention these legal and safe pathways, but Estrella Galán is convinced that they are intended exclusively for talent.

All the concerns have been amply realised, including some additional elements. For example, applications originating from countries with low recognition rates (below 25 %) would be subject to fast-tracking procedures, which goes against the spirit of the right to asylum, whereby each application needs to be assessed individually. Each State has its own recognition rates. Spain grants international protection to persons of Afghan origin in almost all cases, whereas many other EU countries do not. Therefore, an Afghan person's fate would depend on the border where they apply for asylum.

CEAR firmly believes from experience that with the new measures for asylum procedures at the borders there is a risk of repeating what happened in the Greek Islands, as we are seeing in the Canary Islands. We do not want another Moria disaster in any EU territory.

The Pact proposes the development of procedures that are yet to be assessed, but CEAR is not hopeful. For example, it includes a plan against migrant smuggling, but the only antidote against human trafficking is the political will to implement legal pathways.

Therefore, from the perspective of Estrella Galán, this is not a fresh start, but rather more of the same. The mistakes that have been evident since 2015 have not been remedied, while everything that has failed in terms of rights continues to be supported. No solution has been proposed for those that remain trapped at the borders.

### Selection of written interventions and questions from participants:

The interventions were followed by a round of questions, that were mainly focused on the potential risks involved with the new provisions, such as those related to procedures, access to the territory, border externalisation, etc. In this part of the session, the floor was given to members of various types of organisations, from the media to civil society groups, coming from different places such as Morocco or a number of EU countries.

**1. Where is the five-day screening procedure carried out? How long does it take to resolve an asylum application? Will the right to an effective remedy be guaranteed in the event of a removal decision? What will happen to people who are denied asylum but cannot be returned due to the principle of *non-refoulement*? How does this Pact change the existing challenges? How will long-term detentions be managed at the borders?**

**Étienne de Perier:**

There are many elements in the Pact that cannot be explained in detail because we had access to them yesterday. We can, however, elaborate on some topics. Regarding procedures at the borders: the screening has to be done in 5 days, either at the border or within the territory. The screening is the first step needed to identify a person and determine their profile and the type of procedure that they can access. It would not only be applied at the ports of disembarkation (for arrivals by sea), but also at police stations throughout the country. There are questions around the compatibility of this faster return procedure with the respect for fundamental rights, taking into account the merit of the asylum application. First, it must be stressed that this procedure has a maximum term of 12 weeks (3 months), which must allow for a serious investigation of each case individually. Under no circumstances should this border procedure infringe the individual rights of an asylum seeker. This procedure is not applicable to every person arriving at the border; certain categories, including the most vulnerable, families, children or people with special needs, will have access to the regular procedure. The aim is to prevent a person from being left in a legal limbo for months or even over a year, as is happening now, a situation that does indeed violate the dignity of these people. In order to ensure that these border procedures are based on the assessment of the merit of the application, each country will have to implement a monitoring system. The Fundamental Rights Agency is going to present guidelines for each Member State to develop its own monitoring system. In addition to the role of the Fundamental Rights Agency, the mechanisms for the assessment and implementation of EU regulations will also play their part. This is not just about ensuring control over what Member States do, but also about supporting those Member States and using the resources at their disposal. The speeding up of the border procedure should be seen as an opportunity instead of a challenge, as it will improve the asylum system by guaranteeing access to asylum procedures.

**2. In view of a foreseeable increase in the prominence of this faster asylum procedure under the New Pact, what steps does UNHCR intend to take to ensure that procedural guarantees are strictly observed and that no cases of persons in need of protection go undetected due to, for instance, deficiencies in the asylum procedure? What does international protection mean and entail?**

**Marta García:**

Regarding border procedures, UNHCR has the mandate to protect refugees under the Geneva Convention. This mandate and supervisory role of the correct application of the Geneva Convention include this type of actions, and depending on the country and the specific needs, UNHCR has a different working approach with the relevant authorities. It is important to remember that the States are the signatories of the Geneva Convention, and therefore they bear responsibility for ensuring procedural guarantees. UNHCR is an inter-governmental organisation that supports and ensures the correct application of this Convention and these procedures. In Spain, UNHCR engages in training activities aimed at ensuring that interviews meet the quality required, advocating with the authorities to implement mechanisms to control decisions and procedures, guaranteeing that all levels (including the judiciary) are well trained in international protection, and monitoring the processes. They also intervene with the authorities when they do not feel that the right decisions are being made. However, the final decision is always made by the authorities. In some operations, refugee status may be determined under UNHCR mandate. This happens when a country has handed over this responsibility to UNHCR while they reinforce their own capacities or when there is no such capacity. In Spain, UNHCR monitors the needs and areas to be reinforced and works closely with authorities and civil society (lawyers, interpreters and other stakeholders that can identify gaps or areas for improvement within the procedure).

International protection applies to persons from third countries who have been unable to find protection under human rights standards in their own country and have been forced to flee for any of the reasons listed in the Geneva Convention, owing to well-founded fear of being persecuted for reasons of religion, race, nationality, membership of a particular social group or political opinion. If their well-founded fear of being persecuted falls under any of those five reasons, that person may cross an international border and seek protection from the authorities of another country, who will be responsible for ensuring their human rights. From the moment that a procedure is established to determine whether that person falls under the requirements of the Geneva Convention, he or she is recognised as a refugee deserving of international protection and has the right to remain in that country, will be issued a travel document, may acquire nationality within five years and shall enjoy the same rights and duties as a national citizen. More importantly, he or she may will be protected against forcible return (principle of *non-refoulement*) to a country where their life or physical integrity would be threatened on account of any of the reasons listed in the Convention.

**3. What is your opinion on the Pact's migration conditionality imposed by the EU in the allocation of official development aid to third countries? Regarding safe and legal pathways, what are the requirements for humanitarian visas or other formulas for people to get to safety, or are they designed to attract talent only? Regarding returns, is there a clear strategy on voluntary returns? Have co-development funds been made public? The proposal for a new Regulation mixes asylum and return. How will it safeguard the *non-refoulement* principle that is being so evidently violated now? Will the Pact facilitate returns to third countries? How are the negotiations with Tunisia going? Regarding criminalisation, how will it be ensured that asylum seekers are not criminalised and that countries respect their rights? On solidarity, will Member States be forced to accept quotas to remedy their non-compliance with those established in 2016? How important is future flexibility to help with relocation or return?**

**Étienne de Perier:**

Regarding conditionality and development aid, I cannot give you an answer because I do not have one. I would need to consult it. With regard to humanitarian visas and an EU policy that seems to be looking for talent: the Pact does not envisage such humanitarian visas, but it does want to seek to concretise the EU's strong commitment to support refugees and host countries, in conflict areas or in Europe. The Pact is not exclusively intended to attract talent; that would be an oversimplification. Promoting legal pathways to Europe entails a whole set of actions: codifying the commitments reached on resettlement, launching sponsored resettlements, facilitating projects to help resettle people who could have difficulties reaching a European country by themselves... This is made possible by an organisation that guarantees that the asylum seeker meets all the requirements in this category, so he or she can access the European continent more easily. Attracting talent is not just about this. It also means promoting labour migration when it responds to market needs, as we see happening in Spain and other European countries. This does not only apply to highly qualified profiles, but to all kinds of profiles. Circular migration projects such as those in Spain can benefit not only the people involved in those projects, but also the countries of origin and destination.

A new strategy on voluntary returns and reintegration is going to be presented. There is no exclusive focus on forced return at the border. Quite the opposite: voluntary return, with all its difficulties, is the preferred option and the priority. This is why we need more programmes to promote voluntary return and reintegration in home countries, which is beneficial to everyone.

Concerning removals: the Pact is not intended to facilitate removals. The proposal that we see are aimed at implementing a system to identify those who have the right to remain on European territory and those who do not, so they can be returned, always fulfilling their fundamental rights. The idea is for them to have the possibility of voluntary return. Where there is no such possibility, a removal order will be sought. All



of this requires co-operation with countries of origin. Therefore, it is hard to take one element from this Pact in isolation from its context. Returns will not increase without better cooperation with the countries of origin, and such cooperation will not exist unless the countries of origin consider it in their interest to collaborate with Europe. That is why an international perspective is so important for the Pact.

On criminalisation: the Commission's recommendation is not to criminalise people helping irregular migrants for humanitarian reasons. Their proposal is to foster the exchange of information and cooperation with a group of experts that is going to be set up.

About the flexibility of States regarding their participation in solidarity mechanisms: such a flexibility exists, although there is a specific mechanism to ensure that countries cannot avoid contributing to solidarity in some way by proposing alternatives to relocation. This option to support returns may be implemented through various possibilities: experts, coordination with countries of origin to facilitate return procedures, operational support. The help of EU budget will be required, too. Lastly, after eight months, if these return efforts are not successful, the State sponsoring the return will have to accept his or her transfer to its territory - not as an individual without rights for an indefinite amount of time, but in order to complete the return procedure.

#### **4. Is CEAR considering participating in voluntary return programmes?**

**Estrella Galán:**

For CEAR, "voluntary returns" is a euphemism. People who risk their life by crossing a sea border or travelling the African continent for years, with all that implies, after having invested all their savings and those of their families in the migratory process or in escaping, often not by choice... Can we really talk about a "voluntary" return back to their country or to another third country where their safety is not guaranteed? To speak of return in these cases is very disrespectful of human rights. Therefore, before we know how we can participate as a human rights organisation, we need to understand what this means. We can advance that CEAR will not be taking part in any return programs, voluntary or not. We truly respect and applaud the organisations that undertake that work, but CEAR's strength lies somewhere else, and our mission is to receive, to ensure compliance with the right to asylum, and to support the hosting and inclusion of migrants and refugees, who contribute so much to our country. Calling it voluntary is out of place. Returns are rather involuntary, especially if they take place under an accelerated procedure at the border or in the context of an arrest in a hotspot or anywhere where people's guarantees are not met. This is not part of CEAR's vision, mission or values, although we respect what other organisations do.

#### **5. Why are there refugee camps in other European countries and not in Spain? Do you think that an education programme on migration in Spain and in countries of**



**origin would be a good way of informing immigrants of the legal pathways and bringing Spaniards closer to the reality of immigrants to eliminate racism? What rights and services do undocumented or illegal immigrants enjoy when they arrive in Spain or in the European Union in general?**

**Marta García:**

About the camps: each State is in charge of the management of the people arriving in its territory. Depending on the situation, they may ask for the support of the UNHCR, and subject to their capacities, a decision is made on how to provide them with the human safety they need in terms of rights and basic services, etc. Spain has a system whereby reception conditions are provided through a process that is based in urban places and therefore there are no camps. In any case, UNHCR seeks to support States in creating reception and hosting environments to avoid camps and find alternative accommodation and housing options depending on available resources and possibilities. For the moment, the Spanish reception system (managed by and under the jurisdiction of the Ministry of Inclusion, Social Security and Migration, through the Secretary of State for Migration) has set up a number of centres, flats and agreements with NGOs. In parallel, there are other organisations offering alternative forms of reception. There are, however, temporary reception centres in Ceuta and Melilla, which may be somewhat similar to camps, though with differences. The conditions in Spain have led the authorities to implement these hosting conditions, but this does not mean that they are optimal. On the contrary, there is still much that can be done to match reception needs to existing migratory flows. The authorities and UNHCR are working on this.

On the subject of training: one of the main working areas of UNHCR is to support states in providing information when the countries themselves do not have the capacity to do so. Such information concerns international protection and the right to asylum. If they wish to access the asylum procedure, UNHCR explains to them what it involves, for whom it is intended, and provide additional information on issues of immigration, diversity, inclusion, etc. This is indeed very important. The reality is that immigration, as mentioned yesterday at the press conference, is not something specific to the moment we are living in, but has been around for centuries and is beneficial to all societies, including the hosting society and everyone who is part of it, so it is essential to inform and educate people.

To answer the question about irregular migrants who have not applied for asylum in the territory of a State: UNHCR works with asylum seekers and refugees, who have a different legal status from that of the law on foreigners, so their rights and obligations are different from those of an irregular migrant. However, human rights apply to every single person. If we refer to the human rights treaties, all these people enjoy a full range of rights, just like everyone else. Certainly, the fact that they are not regularly

(R)

established in the country because they do not have a document that authorises them to be there does not justify any discrimination against them or the violation of their human rights or their dignity.

The session was recorded and the video is available at <https://event.voiceboxer.com/playback/3pum2m>

Funded by:



SECRETARÍA DE ESTADO PARA LA UNIÓN EUROPEA

