



Agreements

Council and Parliament agree on reform of EU asylum and migration system

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مركز المتوسط للدراسات الإستراتيجية

مؤسسة بحث وتفكير إستراتيجي، تأسست في بريطانيا، يناير 2020، تقوم علي إعداد البحوث والدراسات والتقديرات وأوراق السياسات، وإدارة المشروعات البحثية، وتنظيم الفعاليات العلمية، وتقديم الإستشارات حول التفاعلات السياسية والإستراتيجية في منطقة المتوسط ومايرتبط بها من تفاعلات إقليمية ودولية.



The Council and the European Parliament reach breakthrough in reform of EU asylum and migration system

The press release was updated on 21 December.

The Spanish presidency of the Council and the European Parliament have reached a deal on the core political elements of five key regulations that will thoroughly overhaul the EU's legal framework on asylum and migration.

The EU is delivering on its promise to improve the asylum and migration system. Citizens across the EU want their governments to deal with the migration challenge and today is a big step in this direction. This reform is a crucial piece of the puzzle. But the EU also remains committed to tackling the root causes of migration, working together with countries of origin and transit and addressing the scourge of migrant smuggling.

Fernando Grande-Marlaska Gómez, Spanish Minister for the Interior

The five EU laws that the Spanish presidency and Parliament have agreed on touch upon all stages of asylum and migration management, ranging from screening irregular migrants when they arrive in the EU, taking biometric data, procedures for making and handling asylum applications that also reinforce applicants' rights, the rules on determining which member state is responsible for handling an asylum application and cooperation and solidarity between member states and how to handle crisis situations, including cases of instrumentalisation of migrants.

The new rules, once adopted, will make the European asylum system more effective and will increase the solidarity between member states by enabling to lighten the load on those member states where most migrants arrive.

Asylum procedure regulation

The asylum procedure regulation (APR) establishes a common procedure that member states need to follow when people seek international protection. It streamlines the procedural arrangements and sets standards for the rights of the asylum seeker, including the right to free legal counselling in the administrative procedure.

The regulation also sets out clear obligations for applicants in terms of cooperating with the authorities throughout the procedure.

Border procedure

The APR introduces a mandatory border procedure, with the aim of quickly assessing at the EU's external borders whether **applications for asylum are unfounded or inadmissible**. Persons subject to the asylum border procedure are **not authorised to enter the member state's territory**. They will also have to reside at or in proximity to the external border or transit zones or in other designated locations within the territory of a country (in compliance with the guarantees and conditions of the reception conditions directive).

The border procedure applies when an asylum seeker makes an application at an external border crossing point, following apprehension in connection with an illegal border crossing and following disembarkation after a search and rescue operation at sea. The procedure is mandatory for member states if the applicant is a **danger to national security or public order**, they **have misled the authorities** with false information or by withholding information and if the applicant has a nationality with a **recognition rate below 20%**. Unaccompanied minors will be excluded from the border procedure, unless they pose a security threat.

A prioritisation system is introduced to clarify which categories of applications must be given priority for the purposes of determining admission to a border procedure. Priority should be given to the examination of the applications of minor applicants

and their family members. Member states must also put in place a mechanism to monitor the respect of fundamental rights in relation to the border procedure.

Adequate capacity

Member states need to establish an adequate capacity, in terms of reception and human resources, which would allow them at any given moment to carry out the border procedure and to enforce return decisions for an identified number of applications.

At EU level this adequate capacity is 30 000. The adequate capacity of each member state will be established on the basis of a formula which takes account of the number of irregular border crossings and refusals of entry over a three-year period. The maximum number of asylum applications that a member state is required to examine in the border procedure on an annual basis will be four times its respective adequate capacity limit.

Safe third country concept

Determining authorities competent for the examination of applications for international protection **may reject an application as inadmissible** if the **safe third country concept applies**. A third country may only be designated as a safe third country where a strict list of criteria are met. An applicant's life and liberty must for instance be guaranteed and they must be protected against refoulement. It is also essential that there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for him or her to go to that country.

Asylum and migration management regulation

Modification of Dublin rules

The asylum and migration management regulation (AMMR) will replace the current Dublin regulation. The Dublin regulation sets out **rules determining which member state is responsible** for the examination of an asylum application (and which can lead to an asylum seeker being transferred to another member state than the one he or she resides in). The AMMR will clarify the responsibility criteria and streamline the rules for the transfer of an applicant.

Under the new regulation, asylum seekers are required to apply in the member state of **first entry or legal stay**. However, when certain criteria are met, another member state may become responsible for dealing with an asylum claim. According to the deal, when an applicant is in the possession of a diploma (which is not older than 6 years) of an EU member state education establishment, that member state will be responsible for examining the application for international protection.

Furthermore, the criterion aiming at reuniting applicants with their family members will be broadened in order to cover, in addition to family member who are beneficiaries of international protection, also those who reside in a country on the basis of the EU long-term residence permit, have become citizens and to new-born children.

National and EU strategies

Member states must put national strategies in place to ensure they have the capacity to run an effective asylum and migration system which respects EU law and international legal obligations. In order to ensure a consistent approach of the national plans, the Commission will draw up its own five-year European Asylum and Migration Management Strategy.

Preventing abuse and secondary movements

The regulation limits the grounds for the **cessation or shift of responsibility between member states**. This reduces the possibilities for the applicant to choose the member state where they submit their claim and thus discourages secondary movements (when a migrant moves from the country in which they first arrived to seek protection or permanent resettlement elsewhere).

The new regulation has modified the time limits for the duration of a country's responsibility to deal with an application:

- the member state of first entry will be responsible for the asylum application for a duration of 20 months, which is an increase from the current 12 months
- when the first entry happens following a search and rescue operation at sea, the duration of the responsibility is 12 months
- if a member state rejects an applicant in the border procedure, its responsibility for that person will end after 15 months (in case of a renewed application)

When a country wants to transfer a person to the member state which is actually responsible for this person and he or she absconds (e.g. by going into hiding to evade transfer), responsibility will shift to the transferring member state after three years.

In order to simplify the current complex take-back procedure aimed at transferring an applicant back to the member state responsible for his or her application, the new asylum and migration management regulation **introduces a simple, swifter take-back notification**. This procedure will come into play when the responsibility has already been established and can be easily verified in Eurodac.

New solidarity mechanism

To balance the current system whereby a few member states are responsible for the vast majority of asylum applications, a new solidarity mechanism will be established. The new rules combine **mandatory solidarity** to support member states who cannot cope with the number of irregular arrivals into their territory with **flexibility for member states** as regards the choice of their contributions. These contributions include relocations of asylum seekers and of beneficiaries of international protection, financial contributions, including in third countries, or alternative solidarity measures such as deployment of personnel or measures focusing on capacity building. Member states have full discretion as to the type of solidarity they contribute. No member state will be obliged to carry out relocations. An EU solidarity coordinator will coordinate the implementation of the solidarity mechanism.

There will be a **minimum annual number for relocations** from member states where most persons enter the EU or apply to member states less exposed to such arrivals. **This number is set at 30 000**, while the minimum annual number for financial contributions will be fixed at €600 million. These figures can be increased where necessary and situations where no need for solidarity is foreseen in a given year will also be taken into account.

In order to compensate for a possibly insufficient number of pledged relocations, responsibility offsets will be available as a second-level solidarity measure, in favour of member states benefitting from solidarity. This will mean that the contributing member state will take responsibility for the examination of asylum claims of persons who would under normal circumstances be subject to a transfer to the member state responsible (benefiting member state). This scheme will become mandatory if relocation pledges fall short of 60% of total needs identified by the Council for the given year or do not reach the number set in the regulation (30 000).

Screening of irregular migrants

Another pillar of the Pact is the screening regulation. Its aim is to **strengthen controls of persons at external borders**. It also ensures fast identification of the correct procedure – such as return to their country of origin or start of an asylum procedure – when a person enters the EU without fulfilling the right entry conditions.

The screening will include **identification, health and security checks**, as well as fingerprinting and registration in the Eurodac database. It should be carried out near the external borders over a maximum period of 7 days.

The regulation will apply to persons who have been apprehended in connection with an unauthorised crossing of an external border by land, sea or air, persons disembarked following a search and rescue operation at sea and persons who have made an application for international protection at external border crossing points or in transit zones but do not fulfil the conditions for entry. It also applies to persons apprehended on EU territory who have escaped external border controls (in the latter case the screening should be carried out in 3 days).

Persons undergoing the screening process are **not authorised to enter the territory** of a member state and must remain at the disposal of the authorities at the screening location. They may be placed in detention in accordance with the conditions and guarantees laid down in existing EU legislation.

The Council and European Parliament have agreed that member states will have to put in place an independent mechanism to monitor respect for fundamental rights during screening.

Eurodac: building a biometric migration database

The Council and the Parliament have also agreed on the expansion of the Eurodac fingerprint database. The update of the Eurodac regulation will make it possible to **better tackle irregular movements** and monitor the paths of asylum seekers and persons in an irregular situation throughout the EU. In particular, the changes that the co-legislators agreed on allow to register individual asylum *seekers*, instead of *applications*. This will enable authorities to better identify persons lodging multiple applications. As a result, it will be easier to identify the member state responsible for processing an asylum application and trace secondary movements.

Expansion of Eurodac

Eurodac will be expanded to contain **additional biometric data such as facial images**. Other personal data that will be collected includes a person's name, date of birth, nationality and the date and place of application of international protection.

In addition to storing data of asylum seekers, the database will also cover persons who are staying in a country illegally, who have entered the EU irregularly as well as persons disembarked following search and rescue operations.

The collection of biometric data will become mandatory for **persons of at least six years of age**, compared to 14 years under current rules.

Registration of beneficiaries of temporary protection

The co-legislators also agreed on a proposal of the member states to register persons benefiting from temporary protection. Registering data of beneficiaries of temporary protection in Eurodac rather than in ad-hoc registration systems will ensure that they benefit from the safeguards and protections laid down in this regulation, particularly with regard to the limited data retention period.

This new provision will not apply to Ukrainian refugees enjoying temporary protection under the current scheme.

The co-legislators also agreed that Eurodac should be used to support the implementation of resettlement schemes. These schemes provide legal and safe pathways to protection in the EU. According to the agreed provisions, persons resettled under national or EU resettlement schemes will therefore be registered in Eurodac.

Eurodac use for law enforcement

Another update concerns the recording of threats of a person to a member state's security. Under certain circumstances, it will be necessary to record whether, following security checks, it appears that a person could pose a threat to a country's internal security.

Moreover, **law enforcement authorities** will be able to **consult the Eurodac database** to prevent, detect or investigate terrorist offences or other serious criminal offences. Under the new rules, law enforcement bodies will be able to access Eurodac for consultation purposes without a prior check in national databases and in the automated fingerprinting identification systems of other member states.

Data retention period

As is already the case under the current framework, data relating to applicants for international protection will be stored in Eurodac for 10 years. The co-legislators also agreed that there should be no retention period for statistics, which will be stored in an anonymised manner.

Support to member states facing a situation of migratory crisis

The fifth leg of the Pact is a new law that establishes a framework allowing member states to **address situations of crisis** in the field of asylum and migration. They would on the one hand be authorised to **adjust certain rules**, for instance concerning the registration of asylum applications or the asylum border procedure. On the other hand these countries would be able to **request solidarity and support measures** from the EU and its member states.

These exceptional measures and this solidarity support require authorisation from the Council.

The proposed new law also contains rules on dealing with the impact of a situation where migrants are instrumentalised for political purposes i.e. foreign state actors using migratory flows to try to destabilise the EU and its member states.

Exceptional measures in crisis situations

In a crisis or force majeure situation, member states may be authorised to **deviate from certain rules** concerning the asylum and the return procedure. In this sense, among other measures, the registration of applications for international protection may be completed no later than four weeks after they are made, rather than 7 days, easing the burden on overstrained national administrations. When it comes to a crisis situation, a member state may also request to change the criteria for an applicant to be examined in the border procedure (e.g. increasing the threshold related to the recognition rate to 50%).

As a further exception, member states in a crisis situation would not have to take back asylum seekers from another EU country, as they would be required to do under normal circumstances.

Solidarity with countries facing a crisis situation

A member state facing a crisis situation may request solidarity contributions from other EU countries. These contributions are similar as those agreed under the AMMR, i.e. the relocation of asylum seekers or beneficiaries of international protection from the member state in a crisis situation to contributing member states, responsibility offsets and financial contributions or alternative solidarity measures.

Next steps

Following today's provisional agreement, work will continue at technical level in the coming weeks to flesh out the details of the new regulations.

After that the provisional agreement will be submitted to member states' representatives (Coreper) for confirmation.

Background

All five regulations which are part of today's political agreement are components of the new pact on migration and asylum which the Commission proposed on 23 September 2020. The Council has reached its position on these five laws in June 2022, June 2023 and October 2023 respectively and has since then been negotiating with the European Parliament to settle to agree on a common stance.

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