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2.1.2 The European Commission's new Pact on Migration and Asylum

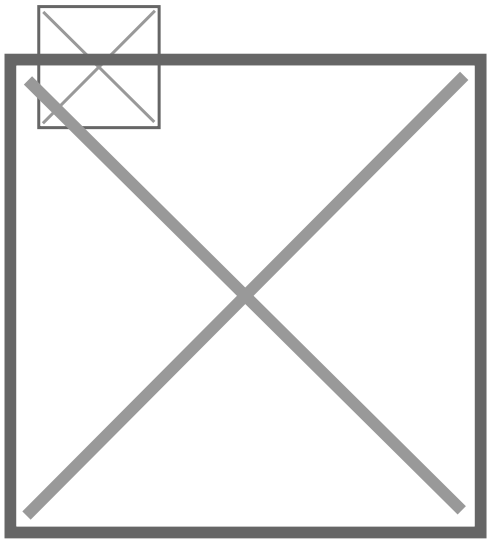
Building on previous progress, in September 2020 the European Commission presented a new Pact on Migration and Asylum, proposing a fresh start on addressing migration with the aim of building confidence through improved, faster and more effective procedures and striking a balance between fair-sharing of responsibility and solidarity.[93] The European Commission presented the pact as a durable framework for managing a complex migratory reality, which affects Member States in different ways and to varying degrees, while remaining interdependent on each other's policies and decisions.

To accommodate diverse perspectives and needs in a balanced and integrated fashion, the pact is based on in-depth consultations with the European Parliament, Member States, civil society organisations, social partners and the business sector.[94] It aims to provide the framework for responding to the opportunities and challenges brought by migration and asylum flows during stable times, in situations of pressure and in crisis situations. The Pact on Migration and Asylum aims to set the framework for:

- Robust and fair management of external borders, including identity, health and security checks;
- Fair and efficient asylum rules, streamlining procedures on asylum and the return of rejected applicants;
- A new solidarity mechanism for situations of search and rescue, pressure and crisis;
- Stronger foresight, crisis preparedness and response;
- An effective return policy and an EU-coordinated approach to returning third-country nationals to their country of origin;
- Comprehensive governance at the EU level to better manage and implement asylum and migration policies;
- Mutually beneficial partnerships with key third countries of origin and transit;
- Sustainable legal pathways for those in need of protection and to attract talent to the EU; and
- Effective integration policies.[95]

To achieve these goals, the European Commission maintained its proposals and supported the provisional agreements already reached on the Qualification Regulation, the Reception Conditions Directive, the Union Resettlement Framework Regulation, and the EU Agency for Asylum. It also

called for the swift conclusion of the negotiations on the recast Return Directive. The Commission withdrew the 2016 proposal for an amended Dublin Regulation and replaced with a new proposal for an Asylum and Migration Management Regulation. In conjunction with the five proposals from 2016 and 2018 which were maintained, the pact comprises a package of nine additional instruments.[96]



New Screening Regulation

Amended proposal revising the Asylum Procedure Regulation

Amended proposal revising the Eurodac Regulation

New Asylum and Migration Management Regulation

New Crisis and Force Majeure Regulation

New Migration Preparedness and Crisis Blueprint

New Recommendation on Resettlement and Complementary Pathway

New Recommendation on Search and Rescue Operations by Private Vessels

New Guidance on the Facilitators Directive

Source:EASO

New Screening Regulation

The proposal sets forth a pre-entry screening procedure for:

- All third-country nationals who are present at the external border and do not fulfil entry conditions;
- Third-country nationals who disembark following a search and rescue operation;
- Third-country nationals at the external borders who wish to apply for international protection;
- Third-country nationals who present themselves at border crossing points; and
- Third-country nationals who are apprehended in the territory of a Member State without fulfilling the conditions of entry and stay – with the exception of individuals overstaying their visas since they have been already subjected to border checks upon arrival.

The regulation introduces uniform rules on the procedures to be followed at the pre-entry stage to assess the individual needs of third-country nationals and the duration of information collection for identification purposes. It also creates a framework for uniform rules to screen irregular migrants who are apprehended within the territory by eluding border controls upon entering the Schengen area.

The screening consists of: i) a preliminary health and vulnerability check; ii) an identity check against information in European databases; iii) registration of biometric data in a database, if not registered already; and d) a security check through a query of relevant national and EU databases, in particular the Schengen Information System (SIS), to verify that the person does not constitute a threat to internal security.

For those intending to apply for international protection, access to the asylum procedure must be ensured by referral to the asylum authorities. During the screening, that is, during the checks to determine the appropriate procedure to follow, third-country nationals should not be authorised to enter the territory of the Member States.

Third-country nationals who apply for international protection during the screening should be considered as applicants for international protection, but the legal effects of the Reception Conditions Directive should apply only after the screening has ended. Similarly, return procedures should only start after the screening has ended. The screening can be followed by relocation under the mechanism for solidarity envisaged in the proposed new Asylum and Migration Management Regulation (for more details see the description of the proposal below). The proposal provides that Member States are required to set up an independent monitoring mechanism to ensure that fundamental rights are safeguarded throughout the process and compliance with the principle of non-refoulement is ensured.[97]

Amended proposal revising the Asylum Procedure Regulation



The Commission proposed targeted amendments to its 2016 proposal,[vii] which already aimed to streamline asylum procedures with a swifter common procedure to identify those in need of protection and those who are not. In conjunction with the proposal for a new Screening Regulation, the revised Asylum Procedure Regulation aims to establish a seamless link between all stages of the process, from arrival to processing of asylum requests and, where applicable, the return of rejected applicants.

Apart from screening when the appropriate procedure to follow is already checked, the pre-entry phase will include an end-to-end border procedure for asylum and return. Following the screening, it will be determined whether an asylum application should be assessed in the border procedure without authorising the applicant's entry into the territory of the Member State or if it should be channelled into a normal asylum procedure. During the border procedure, decisions will be taken on admissibility and/or on the merits of the application. The grounds for the border procedure are the same as the grounds for the accelerated procedure *(see Section 4.3 for more information on the accelerated procedure)*. Our of these, three entail a mandatory application of the border procedure: cases where the person represents a danger for the national security or public order, cases where the person misleads the authorities or cases where the person comes from a country for which the recognition rate is 20% or lower. The latter is a newly-added ground both for the accelerated and the border procedure. The recognition rate is to be calculated on the basis of the

latest available, annual Eurostat data on the EU-wide average and should refer to the decisions of the determining authority granting international protection.

Unaccompanied minors and minors below the age of 12 and their families will not be subject to the border procedure, unless they are considered a danger to national security or the public order of the Member State. Other exceptions concern situations involving medical reasons, persons with special procedural needs if the necessary support cannot be ensured at the border, cases where the grounds for the border procedure are not/no longer applicable (for example if it becomes apparent that for a person coming from a low recognition country the rate is not representative due to personal circumstances). A special exception is foreseen for the mandatory asylum border procedure: Member States may choose not to apply it when a rejected applicant is unlikely to be readmitted by the third country.

The foreseen duration of the asylum procedure is 12 weeks from registration (administrative stage and appeal stage). The deadline for lodging an application for international protection in the border procedure should not take longer than 5 days from registration.

The links with return are reinforced: the decision rejecting the asylum application and the return decision should be issued together and appealed together in front of the same court. The amended proposal contains specific provisions on the return border procedure. It also contains provisions aimed at reinforcing the rules to tackle abuse through subsequent applications.

The aim of the proposed amendments is to ensure that no applicant is left in protracted uncertainty, while all necessary guarantees will be put in place to ensure that each case is individually assessed, taking into account possible vulnerabilities and in full respect of fundamental rights, including the principle of non-refoulement. The explanatory memorandum of the amended proposal states that the proposed border procedure would be beneficial to the asylum system in general to better manage abusive and inadmissible asylum requests at the border and provide an efficient treatment of genuine cases inland.[98]

Amended proposal revising the Eurodac Regulation



Building on the provisional agreement reached by co-legislators, the amended proposal complements these changes and aims at transforming Eurodac into a common European database to support EU policies on asylum, resettlement and irregular migration. The proposed changes include counting individual applicants in addition to applications, ensuring that all shifts in responsibility for the examination of an application within the EU are registered in the system, contributing to prevent unauthorised movements to other Member States, including relocation-related data in the system and ensuring better monitoring of returnees.

The new Eurodac database will be interoperable with border management databases towards an all-encompassing and integrated migration and border management system. It will no longer be limited to asylum applicants and those who cross the external borders irregularly but will include non-EU nationals staying illegally in the EU. The data retention period for migrants apprehended at the external borders will be extended to 5 years from the current 18 months, which will ensure that illegal immigration and secondary movements within and to the EU can be sufficiently monitored and, where applicable, facilitate the identification and re-documenting of these individuals for the

purpose of return. Among the planned amendments foreseen in the 2016 proposal, it was maintained for example that minors are registered from the age of 6 to improve the safety of child migrants (for example, to detect cases of human trafficking and establish family links if a child goes missing). Finally, with additional information available in the system, the tracking of unauthorised movements within the EU will be facilitated. Overall, the proposed amendments are meant to create a clear and consistent link between specific individuals and the procedures they should follow in order to better manage irregular migration and the detection of unauthorised movements.[99]

New Asylum and Migration Management Regulation



This regulation provides a common framework which recognises that managing irregular arrivals effectively should be founded on a comprehensive approach through integrated policy-making and not a challenge to be addressed by individual Member States. It aims to maintain the link between responsibility-sharing, solidarity and the obligations of Member States to protect the external borders, taking into account international obligations for conducting search an rescue operations and exceptions designed to protect family life and the best interests of the child.

For the implementation of the comprehensive framework, the proposal sets out a governance system built on national strategies of Member States, which will feed into a European Strategy on Asylum and Migration Management that will outline the strategic approach to managing asylum and migration at the European level and on the implementation of asylum, migration and return policies. The European Commission will also publish a Migration Management report annually that will include a short-term projection of the evolution of the migratory situation and allow for a timely response to evolving trends in migration and responses to the results of the monitoring framework. This framework will be complemented by a system of regular monitoring of the migratory situation through situational reporting by the European Commission. This work will be supported by the activities under the Migration Preparedness and Crisis Blueprint, notably the monitoring and reporting activities provided therein. This new governance design will set the path for a more integrated and crisis-resilient asylum and migration management system that will anticipate migration developments and focus on strengthening the external dimension, improve border management and provide international protection to those in need while ensuring rapid returns of others.

The proposal essentially preserves existing criteria for determining responsibility, but it strengthens family unity by extending the definition of a family member to siblings and families formed in transit, aims to clarify the responsibility of Member States following search and rescue operations, and introduces a new criterion on possessing education diplomas. The aim of the amendments is to better balance the responsibility criteria and to improve the efficiency of the system by reinforcing the responsibility of a given Member State for examining an application for international protection, once such responsibility is established, while aiming to limit unauthorised movements by removing certain rules on cessation of possibility and reducing possibilities for the shift of responsibility between Member States.

A new approach to solidarity is introduced, based on a framework that allows for a real-time assessment of the situation in Member States and procedural rules to facilitate relocation and return sponsorships as a means of solidarity. The proposal foresees the establishment of a

solidarity mechanism with specific measures for Member States to alleviate migratory pressure in another Member State and measures following disembarkations after search and rescue operations, through relocation, return sponsorship or providing direct assistance to the Member State under pressure.

Each Member State's contribution is to be calculated through a distribution key based 50% on the national gross domestic product (GDP) and 50% on population size. The solidarity mechanism will be triggered when the European Commission, either on its own initiative or upon request by a Member State, assesses the situation and determines that a national system is under pressure or at risk. If pledges by Member States fall more than 30% below the total number of relocations or return sponsorships deemed necessary, then Member States which did not pledge will be requested to cover at least half of their 'fair share' according to the distribution key.[100]

New Crisis and Force Majeure Regulation



This proposal aims to adapt asylum and return procedures, as well as the solidarity mechanism, so that Member States can respond effectively to situations of crisis and force majeure. A crisis situation covers "exceptional situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State, being of such scale and nature that it would render a Member State's asylum, reception or return systems non-functional and which risk having serious consequences for the functioning of, or result in the impossibility of applying, CEAS and the migration management system of the Union". The proposal also contains measures relating to force majeure which can be applied by a Member States or by the European Union as a whole with respect to time limits set out in the proposed Regulation on Asylum and Migration Management or the proposed Asylum Procedures Regulation.

A simplified procedure and a shortened timeframe are set out to trigger the compulsory solidarity mechanism foreseen in the Asylum and Migration Management Regulation. In situations of crisis, the proposal provides for a wider scope for relocation and reinforces a Member State's responsibility to provide assistance in the area of return in the form of return sponsorship (e.g. instead of 8 months, the obligation to transfer an irregular migrant is triggered if the person does not return or is not removed within 4 months). The proposal includes possibilities for derogations from the asylum and return rules and, in particular, from the proposed Asylum Procedures Regulation, such as:



The possibility to apply the border procedure to third-country nationals and stateless persons whose EU-wide recognition rate is 75% or lower;



The possibility to extend the duration of the examination of an application under the border procedure by an additional 8 weeks;



The possibility to apply a longer deadline of 4 weeks on the registration of applications for international protection and to extend the time limits for sending and replying to take charge requests and take back notifications, as well as to implement transfers; and



The possibility to derogate from certain provisions related to return in the context of the border procedure when competent authorities are under strain and significant workloads.[viii]'[101]

These proposed regulations are accompanied in the pact by a set of recommendations from the European Commission as 'soft law instruments' which suggest a course of action on various matters relevant to asylum and migration management.

New Migration Preparedness and Crisis Blueprint



The blueprint consolidates operational cooperation in the area of migration and monitors the migratory situation regularly to base decisions on a complete situational picture.[102] The blueprint will operate in two stages. The first stage will centre on the proactive monitoring of the migratory situation in the EU, at the borders and outside of the EU, coupled with enhanced preparedness and contingency planning. The second stage will be activated in times of crisis. A Blueprint Network, with the participation of the European Commission, Member States, relevant EU agencies including EASO and the External Action Service, will facilitate swift and coordinated action, information-exchange both within the EU and with non-EU partners, informed decisions, and the monitoring of the implementation of decisions.[103]

New Recommendation on Resettlement and Complementary Pathways



The recommendation aims to bridge the transition from previous resettlement schemes to the Union Resettlement Framework. To this end, Member States are invited to achieve the resettlement targets over the two-year period 2020-2021, which were made under the 2020 pledges, consisting of 29,500 people in need of international protection from non-EU countries. Member States are also invited to scale up other forms of legal pathways and increase the number of admission places through humanitarian admissions. The smooth and swift integration of newly-arrived migrants into host societies is not the sole responsibility of state authorities but also requires integrated involvement by civil society and local communities, so the recommendation calls for the establishment and expansion of community sponsorship programmes.[104]

New Recommendation on Search and Rescue Operations by Private Vessels



This recommendation sets out a framework for cooperation and information-exchange among different actors in search and rescue operations, in particular NGOs which engage predominantly in search and rescue operations. Since 2014, thousands of people have crossed the Mediterranean Sea to reach Europe, and thousands of lives have been lost at sea. An integrated, multifaceted approach is required to provide assistance in these scenarios. Since 2015, the search and rescue capacity in the Mediterranean Sea has increased with significant contributions from coastal states and private and commercial vessels. The recommendation calls flag and coastal Member States to exchange information on the vessels involved in rescue operations and the entities that operate or own them. It also foresees the establishment of a Contact Group with the participation of Member States and the European Commission to liaise regularly with all relevant stakeholders, including private entities owning or operating vessels for the purposes of search and rescue activities. The primary aim of the Contact Group will be to increase safety at sea and to ensure that competent authorities have all the information they require to monitor and verify compliance with standards of safety and with the relevant migration management rules. Importantly, the recommendation reiterates the IMO guidelines that, when selecting a place of safety for the disembarkation of people rescued at sea, it is important to take into account a variety of factors, including avoiding disembarkation in

territories where the lives and freedoms of the rescued would be threatened.[105]

New Guidance on the Facilitators Directive



The guidance provides clarification on the interpretation of the Facilitators Package[106] in the context of search and rescue activities conducted by non-state actors.
The Facilitator's Package is the legal framework adopted by the EU in 2002 to define the offence of facilitating an unauthorised entry, transit or residence in the EU and to set out related criminal sanctions.[107] The new guidance set forth by the European Commission aims to address possible misinterpretations of the package to mean that search and rescue activities carried out by non-state actors amount to facilitating irregular entry or transit. Indeed, it clarifies that the Facilitation Directive should not be interpreted as criminalising humanitarian activities in the form of search and rescue. It further explains that the criminalisation of such activities and actors is in breach of international law and cannot be permitted under EU law. Through the guidance, the European Commission reiterated the Resolution of the European Parliament calling Member States to 'to transpose the humanitarian assistance exemption provided for in the Facilitation Directive'[108] and invited Member States to use the possibility in the Facilitation Directive, Article 1(2)[ix] to distinguish between activities carried out for the purpose of humanitarian assistance and activities that aim to facilitate irregular entry or transit.

The nine proposed legislative instruments, in conjunction with the 2016 and 2018 proposals that were maintained, intend to calibrate a durable framework to manage a complex migratory reality. Regarding the EU's engagement with external partners, the approach of the new pact will be based on a joint assessment of the needs and interests of both the EU and its partner countries and will centre on the following dimensions:

- Protecting refugees and people in need of protection and providing support to host countries for refugees;
- Building economic opportunities and addressing root causes of irregular migration;
- Reinforcing the capacity of partner countries on migration management and governance;
- Fostering cooperation in the areas of return, readmission and reintegration; and
- Supporting well-managed legal migration.[109]

Engagement with partner countries will take place at bilateral, regional and multilateral levels. Closer operational cooperation will take place through EU Home Affairs agencies, while the European Commission and the External Action Service will keep working together to ensure that cooperation with third countries is mutually beneficial and caters to the needs of both parties.[110]

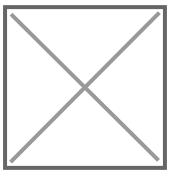
In the area of return, the new package aims to foster a common EU system for the return of third-country nationals through a more effective legal framework, a stronger role for the European Border and Coast Guard and the appointment of an EU Return Coordinator who will be supported by a network of national representatives to ensure consistency across the EU *(see Section 4.15).*[111]

Acknowledging that the successful integration of accepted refugees is an essential component of an effective migration and asylum policy, in November 2020, the European Commission presented

a new Action Plan on Integration and Inclusion for 2021 to 2027.[112] The plan aims to foster integration and inclusion and, ultimately, build more cohesive societies. The main areas of focus include: i) providing inclusive education and training; ii) improving employment opportunities and skills recognition; iii) promoting access to health services; and iv) providing access to adequate and affordable housing. The plan will be implemented with EU funding and through partnerships with all stakeholders, involving migrants, host communities, social and economic partners, civil society organisations and the private sector.[113]

Finally, in its 2021 Work Programme, the European Commission included among the political priorities a number of measures on legal migration, as well as two non-legislative follow-up initiatives under the new Pact on Asylum and Migration: a new EU action plan against migrant smuggling and a new strategy on voluntary returns and reintegration.[114]

Reactions to the New Pact on Migration and Asylum



The presentation of the new Pact on Migration and Asylum and the proposals for the associated legal instruments stimulated renewed discussions on an effective and humane migration management in Europe. The holistic approach of the European Commission in coordinating an inclusive consultation process and the effort to thoroughly integrate the linkages between different migration and asylum policy areas in one coherent approach were received positively, as was the genuine effort to accommodate the diverse needs of different EU Member States and bridge past controversies.[115] The proposals, which were deemed not only necessary but urgent, were largely welcomed by many Member States as an important step in the right direction in building a common approach to migration and asylum.[116]

In December 2020, following the final council of the EU Home Affairs Ministers under the German Presidency of the EU Council, the Presidency published a report taking stock of the progress made on key elements of the European migration and asylum policy and the discussions following the presentation of the new Pact.[117] The report noted that there was a broad agreement among Member States on the main pillars of the future European asylum and migration policy, as set in the new Pact: greater cooperation with third countries; the establishment of legal pathways of migration; effective protection of the external borders while respecting the fundamental rights of migrants and applicants for international protection; a consistent return policy; and reliable solidarity with Member States on the EU's external borders.

A number of specific proposals were received positively, including the proposal for an improved Eurodac database, the establishment of a new Return Coordinator of the Commission and the recommendation to establish a mechanism for preparedness and management of migration-related crises.[118] The majority of Member States expressed their support for the solidarity measures which are presented in a variety of forms in the European Commission's proposals, while some Member States questioned whether relocation or return sponsorship as expressions of solidarity should be mandatory in specific situations.

In a statement following the inter-ministerial meeting of the MED5 in Athens on 20 March 2021, the Ministers of the Interior and Migration of Cyprus, Greece, Italy, Malta and Spain acknowledged the complexity of the issues involved and expressed their appreciation for the commitment of the European Commission, and of the previous and current Presidencies of Germany and Portugal, to

constructively work with all Member States to identify fair and sustainable solutions. In parallel, they expressed their wish to see greater emphasis on the principle of solidarity and fair sharing of responsibility in the legislative texts.[119]

Overall, while diverging views on certain aspects of the proposed migration and asylum policy seem to persist among Member States, with some of them advocating for stricter migration and asylum policies, the proposals set forth by the European Commission seem to provide the foundation for further constructive dialogue at a technical and political level in subsequent negotiations during the legislative process. This will nevertheless require greater collaboration and understanding among Member States.

Beyond governments and state authorities, other stakeholders also provided comments on the pact, welcoming proposals such as the call to not criminalise humanitarian actors involved in search and rescue activities,[120] the establishment of an independent mechanism to monitor the protection of fundamental rights during screening and border procedures[121] and the proposal to scale up safe and legal pathways.[122] Other reactions drew attention to areas where more could be achieved, including:

Overall orientation: The pact was seen as placing a disproportionate emphasis on the management of external borders and on return.[123], [124], [125], [126], [127] There was criticism of what was perceived as a possibility of using cooperation mechanisms with third countries in a way that may lead to the externalisation of the EU's migration management.[128], [129]

Responsibility-sharing and solidarity: Some believed that the essence of the Dublin system is still preserved in the pact, since the criterion that places responsibility on the first country of arrival is maintained in the hierarchy.[130], [131], [132], [133] In addition, it has been suggested that the complexity of the proposed solidarity mechanism may decrease its functionality, while stronger incentives may be needed for Member States to participate.[134] There was also concern about the possibility for Member States to opt out from participating in the relocation of applicants within the EU and, instead, provide administrative and financial support.[135] On return sponsorship, questions were raised regarding the legal status of migrants who – for a number of reasons – cannot be returned after they have been transferred to the sponsoring state.[136]

Pre-entry screening and the border procedure: It was suggested that caution needs to be used to ensure that adequate procedural guarantees for the protection of fundamental rights are followed for the pre-entry screening and the border procedure.[137], [138] This is particularly the case with the possibility to assess an application for asylum without authorising the applicant's entry in the territory of the Member State, which may be seen as having implications for full access to the right to asylum and the fulfilment of the principle of *non-refoulement*.[139] On the proposal to accelerate the examination of an application for applicants coming from countries with an average EU recognition rate of equal or lower than 20%, concerns were expressed that such a practice may lead to the creation of two different standards in asylum procedures depending on the applicant's country of origin.[140] It was also suggested that the applicable timelines for the border procedure may lead to an applicant's prolonged stay at the border with limited access to services typically provided by entities which do not operate at the borders (e.g. legal assistance and access to information). Another point of discussion was the adequacy of reception conditions for migrants and asylum seekers at the borders,[141], [142] while it was also noted that the suggested screening and border procedure may increase the risk of detention.[143], [144], [145]

Situations of crisis and force majeure: The possibility to apply the accelerated border procedure to applicants of a nationality with an EU-wide recognition rate of 75% or lower created concern, potentially increasing the use of this procedure.[146] The regulation allows suspending the registration of applications up to 3 months during a situation of crisis, which leads to concerns about the adequacy of reception conditions at the border and access to basic rights during that period.[147]

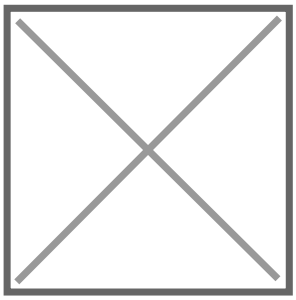
Negative decisions, appeals and return: Doubts were expressed if the proposed time limit for appeals is sufficient for applicants to effectively challenge a negative decision.[148] Questions were also raised about the availability of return counselling and reintegration support at the border.[149]

Consideration of statelessness: Despite the growing numbers of stateless people among those seeking protection in Europe, it was suggested that the pact missed the opportunity to mainstream statelessness in asylum and migration and ensure adequate law and policy responses for the protection of the rights of stateless people.[150]

Following the presentation of the pact, UNHCR put forth a proposal for a three-step border procedure resulting in relocation or return, with a focus on in-merits procedures instead of admissibility procedures. The proposed procedure would be based on the following key principles:

- Guaranteeing reliable access to territory;
- Maintaining fairness, efficiency and in-merit border procedures;
- Early identification and consideration of specific applicant needs; and
- Ensuring detention-related safeguards.[151]

The European Council on Refugees and Exiles (ECRE) also published a number of policy notes and commentaries on the European Commission's proposals.[152]



[vii] The 2016 proposal called for a simpler asylum procedure; reinforced guarantees for asylum applicants with special needs and unaccompanied children; defined clearer obligations for applicants to cooperate with authorities and stricter rules to prevent abuse; and streamlined and harmonised rules related to safe countries of origin and safe third countries.

[viii] The maximum duration of the border procedure for carrying out a return is extended by an additional 8 weeks, and new, targeted cases are introduced when the risk of absconding can be presumed, unless proven otherwise. The timeframe for the implementation of the obligation to relocate or undertake a return sponsorship can be extended when a Member State is in a situation of *force majeure* which renders it impossible to fulfil these obligations.

[ix] Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned." Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0090

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[93] European Commission. (2020, September 23). *A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity*. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706

[94] European Commission. (September 2020). *Factsheet: New Pact on Migration and Asylum*. https://ec.europa.eu/info/sites/info/files/new-pact-on-migration-and-asylum-package_1.pdf

[95] European Commission. (2020, September 23). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM/2020/609 final* . https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM:2020:609:FIN

[96] European Commission. (2021, May 12). *New Pact on Migration and Asylum: Questions and Answers*. https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707

[97] Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM/2020/612 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601291190831&uri=COM:2020:612:FIN

[98] Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2020/611 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601291268538&uri=COM:2020:611:FIN

[99]Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818, COM/2020/614 final. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0611&from=EN

[100] Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund], COM/2020/610 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601291110635&uri=COM:2020:610:FIN

[101] Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, COM/2020/613 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601295614020&uri=COM:2020:613:FIN

[102] Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020H1366&from=EN

[103] European Commission. (2021, May 12). *New Pact on Migration and Asylum: Questions and Answers*. https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707

[104] Commission Recommendation (EU) 2020/1364 of 23 September 2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways. https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32020H1364

[105] Commission Recommendation (EU) 2020/1365 of 23 September 2020 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H1365

[106] Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0090 ; Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. 2002/946/JHA. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0946 These instruments were adopted together and are commonly referred to as the 'Facilitators Package'.

[107] European Commission. (2020, October 1). *Communication from the Commission Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence 2020/C 323/01* . https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52020XC1001(01)#ntr2-C_2020323EN.01000101-E0002

[108] European Parliament. (2018, July 5). *European Parliament resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised*. (2018/2769(RSP). https://www.europarl.europa.eu/doceo/document/TA-8-2018-0314_EN.html

[109] European Commission. (2021, May 12). *New Pact on Migration and Asylum: Questions and Answers*. https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707

[110] European Parliament. (2018, July 5). *European Parliament resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised (2018/2769(RSP))* . https://www.europarl.europa.eu/doceo/document/TA-8-2018-0314_EN.html

[111] European Commission. (2020, September 23). *A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity*. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706

[112] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action plan on Integration and Inclusion 2021-2027, COM/2020/758 final. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0758&from=EN

[113] European Commission. (2021, May 12). *Action plan on the integration and inclusion*. https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/integration/action-plan-integration-third-country-nationals_en

[114] European Commission. (2020, October 19). *Commission Work Programme 2021: A Union of vitality in a world of fragility.* https://ec.europa.eu/info/sites/info/files/2021_commission_work_programme_and_annexes_en.pdf
[115] International Centre for Migration Policy Development. (January 2021). *ICMPD Migration Outlook 2021*. https://www.icmpd.org/fileadmin/2017/ICMPD_Migration_Outlook_2021.pdf
[116] German Presidency of the Council of the European Union. (December 2020). *Presidency progress report on key elements of a European Migration and Asylum policy and the way forward*. https://www.bmi.bund.de/SharedDocs/downloads/EN/eu-presidency/progress-report-key-elements.pdf;jsessionid=33610427202614FE702DD802212B6FD7.1_cid364?__blob=publicationFile&v=2
[117] German Presidency of the Council of the European Union. (December 2020). *Presidency progress report on key elements of a European Migration and Asylum policy and the way forward*. https://www.bmi.bund.de/SharedDocs/downloads/EN/eu-presidency/progress-report-key-elements.pdf;jsessionid=33610427202614FE702DD802212B6FD7.1_cid364?__blob=publicationFile&v=2
[118] German Presidency of the Council of the European Union. (December 2020). *Presidency progress report on key elements of a European Migration and Asylum policy and the way forward*. https://www.bmi.bund.de/SharedDocs/downloads/EN/eu-presidency/progress-report-key-elements.pdf;jsessionid=33610427202614FE702DD802212B6FD7.1_cid364?__blob=publicationFile&v=2
[119] Government of the Republic of Cyprus, Press and Information Office. (2021, March 20). *Press Release: Common Statement of the Inter-Ministerial Meeting MED5, Athens 19-20 March 2021* . https://www.pio.gov.cy/en/press-releases-article.html?id=19113#flat
[120] European Policy Centre. (2020, December 9). *European Programme for Integration and Migration Policy Update -December 2020* . https://www.epc.eu/en/publications/EPIM-Policy-Update-December-2020~3a3e28
[121] European Economic and Social Committee (2021, January 1). *EESC opinion: A New Pact on Migration and Asylum* . https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum
[122] European Economic and Social Committee. (2021, January 27). *Opinion, European Economic and Social Committee: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [COM(2020) 609 final]* . SOC/649. https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum
[123] European Economic and Social Committee. (2021, January 27). *Opinion, European Economic and Social Committee: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [COM(2020) 609 final]* . SOC/649. https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum
[124] European Council on Refugees and Exiles et al. (2020, October 6). *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded* . https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/
[125] Brookings Institute. (2020, November 6). *The EU's "New Pact on Migration and Asylum" is missing a true foundation* . https://www.brookings.edu/blog/order-from-chaos/2020/11/06/the-eus-new-pact-on-migration-and-asylum-is-missing-a-true-foundation/
[126] Danish Refugee Council. (2020, September 23). *Asylum and Migration Pact*. https://drc.ngo/about-us/for-the-media/press-releases/2020/9/reaction-to-the-eu-pact-on-migration-and-asylum/
[127] European Council on Refugees and Exiles. (2020, September 25). *Editorial: The Pact on Migration and Asylum: it's never enough, never, never*. https://www.ecre.org/the-pact-on-migration-and-asylum-its-never-enough-never-never/
[128] European Economic and Social Committee. (2021, January 27). *Opinion, European Economic and Social Committee: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [COM(2020) 609 final]* . SOC/649. https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum
[129] Brookings Institute. (2020, November 6). *The EU's "New Pact on Migration and Asylum" is missing a true foundation* . https://www.brookings.edu/blog/order-from-chaos/2020/11/06/the-eus-new-pact-on-migration-and-asylum-is-missing-a-true-foundation/
[130] European Council on Refugees and Exiles. (2020, October 6). *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded* . https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/
[131] European Council on Refugees and Exiles. (2020, September 25). *Editorial: The Pact on Migration and Asylum: it's never enough, never, never | European Council on Refugees and Exiles (ECRE)* . https://www.ecre.org/the-pact-on-migration-and-asylum-its-never-enough-never-never/
[132] Centre for European Policy Studies. (2020, September 25). *Whose Pact? The Cognitive Dimensions of the New EU Pact on Migration and Asylum*. https://www.ceps.eu/ceps-publications/whose-pact/
[133] European Parliament. (2020, September 28). *New Migration Pact proposal gets mixed reactions from MEPs* . https://www.europarl.europa.eu/news/en/headlines/society/20200924STO87803/new-migration-pact-proposal-gets-mixed-reactions-from-meps
[134] European Council on Refugees and Exiles et al. (2020, October 6). *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded* . https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/
[135] Brookings Institute. (2020, November 6). *The EU's "New Pact on Migration and Asylum" is missing a true foundation* . https://www.brookings.edu/blog/order-from-chaos/2020/11/06/the-eus-new-pact-on-migration-and-asylum-is-missing-a-true-foundation/
[136] European Policy Centre. (2020, December 9). *EPIM Policy Update December 2020*. https://www.epc.eu/en/publications/EPIM-Policy-Update-December-2020~3a3e28
[137] European Economic and Social Committee. (2021, January 27). *Opinion, European Economic and Social Committee: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [COM(2020) 609 final]* . SOC/649. https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum
[138] Danish Refugee Council. (2020, September 23). *Asylum and Migration Pact*. https://drc.ngo/about-us/for-the-media/press-releases/2020/9/reaction-to-the-eu-pact-on-migration-and-asylum/

[139] European Council on Refugees and Exiles. (2020). *Relying on a fiction: New amendments to the Asylum Procedures Regulation: A summary of ECRE's comments on the new amendments to the APR in COM(2020)611 and recommendations for the co-legislators* . https://www.ecre.org/wp-content/uploads/2020/12/Policy-Note-29.pdf
[140] European Council on Refugees and Exiles et al. (2020, October 6). *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded* . https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/
[141] European Economic and Social Committee. (2021, January 27). *Opinion, European Economic and Social Committee: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [COM(2020) 609 final]* . SOC/649. https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum
[142] Danish Refugee Council. (2020, September 23). *Asylum and Migration Pact*. https://drc.ngo/about-us/for-the-media/press-releases/2020/9/reaction-to-the-eu-pact-on-migration-and-asylum/
[143] European Council on Refugees and Exiles et al. (2020, October 6). *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded* . https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fres…
[144] Red Cross EU Office. (2020, December 11). *Immigration detention should only be a last resort*. https://redcross.eu/latest-news/immigration-detention-should-only-be-a-last-resort
[145] European Council on Refugees and Exiles. (2020). *Relying on a fiction: New amendments to the Asylum Procedures Regulation: A summary of ECRE's comments on the new amendments to the APR in COM(2020)611 and recommendations for the co-legislators* . https://www.ecre.org/wp-content/uploads/2020/12/Policy-Note-29.pdf
[146] European Council on Refugees and Exiles. (2021). *Alleviating or exacerbating crises? The Regulation on Crisis and Force Majeure.: ECRE's assessment of risks inherent in the crisis regulation and recommendations for a significant redrafting* . https://www.ecre.org/wp-content/uploads/2021/03/ECRE-Policy-Note-32-Crisis-February-2021.pdf
[147] European Council on Refugees and Exiles et al. (2020, October 6). *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded* . https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/
[148] European Council on Refugees and Exiles. (2020). *Relying on a fiction: New amendments to the Asylum Procedures Regulation: A summary of ECRE's comments on the new amendments to the APR in COM(2020)611 and recommendations for the co-legislators* . https://www.ecre.org/wp-content/uploads/2020/12/Policy-Note-29.pdf
[149] European Economic and Social Committee. (2021, January 27). *Opinion, European Economic and Social Committee: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [COM(2020) 609 final]* . SOC/649. https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum
[150] European Network on Statelessness. (January 2021). *Statelessness and the EU Pact on Asylum and Migration: Analysis and Recommendations*. https://www.statelessness.eu/sites/default/files/2021-01/ENS-Statelessness_and_the_EU_Pact_on_Asylum_and_Migration-Jan_2021_1.pdf
[151] United Nations High Commissioner for Refugees. (2020, October 15). *Practical considerations for fair and fast border procedures and solidarity in the European Union*. https://www.refworld.org/docid/5f8838974.html
[152] European Council on Refugees and Exiles. (2020, September 25). *Editorial: The Pact on Migration and Asylum: it's never enough, never, never*. https://www.ecre.org/the-pact-on-migration-and-asylum-its-never-enough-never-never/ ; European Council on Refugees and Exiles. (2020). *Relying on a fiction: New amendments to the Asylum Procedures Regulation: A summary of ECRE's comments on the new amendments to the APR in COM(2020)611 and recommendations for the co-legislators* . https://www.ecre.org/wp-content/uploads/2020/12/Policy-Note-29.pdf ; European Council on Refugees and Exiles. (February 2021). *ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management COM (2020) 610 2020/0279 (COD)* . https://www.ecre.org/wp-content/uploads/2021/03/ECRE-Comments-RAMM.pdf ; European Council on Refugees and Exiles. (February 2021). *CRE Comments on the Commission Proposal for a Regulation Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum, COM (2020) 613)*. https://www.ecre.org/wp-content/uploads/2021/03/ECRE-Comments-COM2020-613-V2-2.pdf ; European Council on Refugees and Exiles. *ECRE Comments on the amended Proposal for an Asylum Procedures Regulation, COM (2020) 611* . https://www.ecre.org/wp-content/uploads/2020/12/ECRE-Comments-COM-2020-611-2-December-2020.pdf ; European Council on Refugees and Exiles. (November 2020). *ECRE-Comments-COM2020-612-1-screening-December-2020: Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM(2020) 612, 23 September 2020* . https://www.ecre.org/wp-content/uploads/2020/12/ECRE-Comments-COM2020-612-1-screening-December-2020.pdf





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