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2.1.2. The Pact on Migration and Asylum

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Building on previous progress, in September 2020 the European Commission presented a Pact on Migration and Asylum, based on in-depth consultations with the European Parliament, Member States, civil society organisations, social partners and the business sector.98

The Pact on Migration and Asylum aims to set the framework for:

- Robust and fair management of external borders;
- Fair and efficient asylum rules;
- 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 the return of rejected applicants;
- Comprehensive asylum and migration governance at the EU level;
- Mutually beneficial partnerships with third countries;
- Sustainable legal pathways for those in need of protection and to attract talent to the EU; and
- Effective integration policies. 99

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 put forth 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 comprised a package of nine additional instruments.100 In 2021, negotiations were ongoing at the Council and the European Parliament. The nine additional proposals of the pact include:[viii]

1. A proposal for a Screening Regulation introduces uniform rules on the procedures to be followed at the pre-entry stage (identification, registration, security and health checks). At

the end of the screening, all people will be directed to the relevant procedure: asylum or return, at the border or not. 102

2. An amended proposal aims to revise the Asylum Procedure Regulation,ix which already aimed to streamline the asylum procedure with swifter actions to identify those who are in need of protection and those who are not. In conjunction with the proposal for a new Screening Regulation, the revised Asylum Procedures Regulation aims to establish an asylum and return border procedure before entry in the EU (pre-entry phase) and a seamless link between all stages of the asylum procedure, from arrival to the processing of asylum requests and, where applicable, returns. 103
3. An amended proposal revising the Eurodac Regulation aims to gather more data which are needed for the new EU Asylum and Migration Management Regulation. The new Eurodac database will be interoperable with border management databases and build towards an all-encompassing and integrated migration and border management system. Once in place, the proposal will contribute significantly to effective border management. For example, it will facilitate the identification of irregular migration and unauthorised movements within the EU and will increase efficiency in returns.
4. A proposal for a new Asylum and Migration Management Regulation is based on the premise that the effective management of irregular arrivals is not a challenge to be addressed by individual Member States, but a common effort that should be founded on a comprehensive approach through integrated policymaking.105
5. A proposal for a Crisis and Force Majeure Regulation aims to provide adaptations to the asylum and return procedures, as well as the solidarity mechanism, so that Member States can respond effectively to situations of crisis and force majeure.106
6. A proposal for a Migration Preparedness and Crisis Blueprint aims to consolidate operational cooperation in the area of migration and monitor the migration situation regularly so that policy decisions are based on a complete situational picture. 107 A Blueprint Network, including the European Commission, Member States, relevant EU agencies including the EUAA, 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. 108
7. A recommendation on Resettlement and Complementary Pathways aims to bridge the transition from previous resettlement schemes to the Union Resettlement Framework.109 While the provisional agreement on the Union Resettlement Framework reached between the European Parliament and the Council in 2018 was not followed up with subsequent legislative developments, resettlement has been a key theme in policy discussions in 2021. In July 2021, Commissioner Johansson convened the first High-Level Resettlement Forum as a demonstration of the EU's determination to strengthen European and global resettlement efforts. The Commissioner also announced financial support to Member States for the purposes of resettlement and urged them to make ambitious pledges for next year.110
8. A recommendation on Search and Rescue Operations by Private Vessels sets out a framework for cooperation and information exchange among different actors in search and rescue operations, in particular NGOs which engage predominantly in these operations.111
9. New Guidance on the Facilitators Directive provides clarification on the interpretation of the Facilitators Package 112 in the context of search and rescue activities by non-state

actors. It therefore clarifies that the Facilitation Directive should not be interpreted as criminalising humanitarian activities in the form of search and rescues and explains that the criminalisation of such activities and actors is in breach of international law and cannot be permitted under EU law.113

Following political agreement between the Council Presidency and the European Parliament in June 2021, the Parliament's positive position in November 2021 and adoption by the Council in December 2021, Regulation (EU) 2021/2303 entered into force in January 2022 to establish the EUAA. The regulation transformed EASO into a full-fledged agency with a broadened and enhanced mandate which can:

i) contribute more to Member States through operational and technical support;
ii) set common operational standards, indicators and guidelines for the implementation of CEAS;
iii) better monitor national asylum and reception systems of Member States to foster convergence in practices; and
iv) introduce additional guarantees to ensure compliance with fundamental rights116 *(see Section 3)*.

Regarding the recast of the Reception Conditions Directive and the Qualifications Regulation, while provisional agreement was reached in June 2018, no significant progress has been made at the legislative level. Pending further legislative progress on the proposed Return Directive, 117 the Commission adopted in April 2021 the first EU Strategy on Voluntary Return and Reintegration.118 The strategy promotes voluntary returns and reintegration as integral components of a common EU system for the return of third-country nationals. It sets out practical measures to enhance the legal and operational frameworks for returns; improve the quality of returns and reintegration programmes; establish better links between voluntary returns, reintegration and developments initiatives; and strengthen cooperation with third countries.119

Progress was also achieved in 2021 in the broader area of migration related to asylum. In June 2021, the European Commission presented the Schengen Strategy 120 with a four-fold aim to: i) ensure the effective management of the EU's external borders; ii) reinforce the Schengen area internally; iii) improve preparedness and governance; and iv) enlarge the Schengen area by expanding to those EU Member States that are not part of it yet. 121Bringing together a number of ongoing processes, including the interoperability of information systems and the ongoing roll out of the European Border and Coast Guard standing corps, the Schengen Strategy will further calibrate common migration management.

In 2021, efforts continued towards the interoperability of large-scale IT systems in the area of freedom, security and justice, which are used by national authorities across the EU to share information, for example for the purpose of managing migration, including Dublin transfers. The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) focussed on developing three new, large-scale IT systems (EES, ETIAS and ECRIS-TCN), while continuing to manage and update the three existing ones (Eurodac, SIS and VIS) and work on the interoperability between all these systems. 122EU-

LISA confirmed that the timeline for implementing the new interoperability architecture by the end of 2023 remained unchanged.[123]

In light of upcoming changes, ECRE analysed Eurodac's current rules, its place in the EU-wide information systems in the area of freedom, security and justice, and the proposed changes from 2016 and 2020. It made policy recommendations to establish a system with additional safeguards for fundamental rights.[124]

With integration being an essential element of an effective migration management system, the implementation of the Action Plan on Integration and Inclusion started in 2021.[125] The Plan includes approximately 60 actions in the fields of education, employment and skills, health, and housing, bringing together diverse stakeholders to foster integration and inclusion. [126]

In response to unfolding developments at the EU external borders, the European Commission put forth a number of proposals at the end of 2021 on the instrumentalisation of migration and emergency situations at the EU's external borders *(see Section 2.2.2)*.

After the presentation of the Pact on Migration and Asylum in September 2020 and throughout 2021, a number of actors, including civil society organisations and research institutions, offered their reactions to the proposals set forth by the European Commission. The commentaries, articles and policy and legal notes drew attention to areas which needed further clarification or where more could be achieved, including: the need to overhaul the criteria for sharing responsibility and leave a narrower margin of discretion for Member States to implement the solidarity measures;[127], [128] ensuring adequate procedural guarantees for the protection of fundamental rights at the pre-entry screening and the border procedure; [129] concerns about the possibility for a broader application of the accelerated border procedure in situations of crisis and force majeure;[130]securing sufficient time for rejected applicants to appeal negative decisions;[131] providing adequate law and policy responses for the protection of the rights of stateless people; [132] and ensuring that the overall cooperation with third countries does not lead to an overemphasis on return or externalisation of EU migration management.[133],[134]

Footnotes

[viii] For a detailed description of the proposed instruments, see EASO Asylum Report 2021, Section 2. Major developments in asylum in the European Union in 2020.

[ix] 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.

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