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2.1. Reforming the Common European Asylum System: An ongoing process

2.1. Reforming the Common European Asylum System: An ongoing process

icon for pact on migration and asylum

CEAS is a legal and policy framework developed to guarantee harmonised and uniform standards for people seeking international protection in the EU. It emphasises a shared responsibility to process applications for international protection in a dignified manner and with fair treatment.85Since its inception, the approaches and instruments which regulate CEAS have been periodically reformed to respond to the changing landscape of migration and asylum. Amendments to the system take into account the varied experiences of European countries and mixed migration flows.ii

Building on previous progress, in September 2020 the European Commission presented a new Pact on Migration and Asylum, based on in-depth consultations with a multiplicity of state and non-state stakeholders.86 Some aspects of the pact are still under negotiations. In parallel, new discussions emerged following developments; for example, the European Commission proposed a regulation in December 2021 which addresses situations of instrumentalisation in the field of migration and asylum, in response to state-sponsored smuggling of migrants by the Belarusian regime in the EU's eastern land borders.87

The regulation, which complemented the other proposals toward a comprehensive approach, aims to set a framework for managing such situations – instead of resorting to *ad hoc* measures at the national level – in full respect of fundamental rights and international obligations. The proposal was accompanied by a regulation to amend the Schengen Borders Code,88 which aims to improve the Schengen system's resilience to serious threats and to adapt it to new challenges. The amended code would:

- provide new tools to combat the instrumentalisation of migrant flows;
- establish a new legal framework and coordination mechanism for external border measures in the event of a health crisis, drawing on the lessons learned from the COVID-19 pandemic;

- update the legal framework to reintroduce internal border controls in order to safeguard the principle of free movement while responding to persistent threats; and
- introduce alternative measures to these controls, such as a safeguard mechanism for a common response at the internal borders in situations of threats affecting Member States.[89]

In June 2022, the Council adopted its general approach on the proposal for the revision of the Schengen Border Code.[90],[91] The discussion at the Council was informed by the European Commission's report on the State of Schengen.[92] Following the presentation of the Schengen Strategy in 2021, the report came as part of the European Commission's initiative to reinforce the functioning of Schengen through yearly reporting, identifying priorities for the year ahead and monitoring progress. The report set a list of priority actions for 2022-2023 at the national and European levels, including:

- implementing the new IT architecture and interoperability for border management;
- making full use of cross-border cooperation tools;
- ensuring systematic checks of all travellers at the external borders;
- ensuring that the European Border and Coast Guard Agency (Frontex) reaches the full potential of its mandate;
- lifting all long-lasting internal border controls; and
- adopting the revised Schengen Borders Code.[93]

Together with the State of Schengen Report, the European Commission presented a policy document to launch a multiannual strategy for integrated border management,[94] that is, coordinated efforts at the national and international levels among authorities and agencies responsible for border management at the EU's external borders. The document addresses border control; search and rescue; risk analysis; inter-agency, EU and international cooperation; the return of illegally-staying third-country nationals; fundamental rights; research and innovation; and education and training. Consultations on the content between the European Commission, the European Parliament and the Council will result in a Commission Communication establishing the Multiannual Strategic Policy for European Integrated Border Management.[95]

A number of stakeholders have issued commentaries on the European Commission's proposals for the regulations on instrumentalisation in the field of migration and the Schengen Borders Code, expressing concern that they would create a parallel system of managing borders, based on derogations from standards of the EU asylum acquis, whereas the current framework already provides sufficient flexibility to Member States.[96],[97],[98] Relevant commentaries analysed how the provisions of the regulations could possibly affect the fundamental rights of persons who have been subject to instrumentalisation by third-country governments.[99],[100] As a result, concerns were expressed regarding the necessity and proportionality of the measures included in the proposal.[101],[102],[103] To address these concerns, the European Commission stressed that the proposed measures safeguard fundamental rights by ensuring that all arrivals at the EU's external border in a Member State which is faced with instrumentalisation have genuine and effective access to the asylum procedure.[104]

Commentaries have been issued on the Screening Regulation too, especially in regard to the premise that third-country nationals are not considered to have officially entered the territory of a Member State if they arrive through irregular routes. Critical voices argue that this may exclude migrants from effectively accessing rights and procedures.105 To ensure respect for fundamental rights, the regulation also foresees a fundamental rights border monitoring mechanism to be set up by individual Member States. In October 2022, at the European Commission's request, the EU Agency for Fundamental Rights (FRA) issued guidance to EU Member States in setting up national independent mechanisms to monitor fundamental rights compliance at the EU's external borders, in line with the proposed screening regulation.106

With the active work of the French and the Czech Presidencies of the Council of the EU and under the coordination of the European Commission, considerable progress was made in 2022 toward advancing the reform package. In the first semester of 2022, the French Presidency advocated for a gradual approach to adopt the reform package, with cumulative increments of commitment by Member States in both areas of solidarity and responsibility. As a result, in June 2022, the Council adopted negotiating mandates on the Screening and Eurodac Regulations.107

Agreement was also reached by 21 countries on the implementation of the Voluntary Solidarity Mechanism, paving the way for further progress on the Asylum and Migration Management Regulation. The mechanism, which is voluntary and spans 1 year, provides for expressions of solidarity to Member States experiencing particular pressure in their asylum and reception systems through relocations, financial contributions and other measures of support *(read more in Section 2.4)*.108

At the level of the European Parliament, in 2022 the rapporteurs presented draft reports on all legislative proposals included in the Pact on Migration and Asylum and on the recast Return Directive.109 With the pact being one of the top priorities, in September 2022 the European Parliament and the rotating Presidencies of the Council of the EU reached political agreement on a joint roadmap for negotiations between co-legislators in order to adopt the legislative proposals before the end of the 2019-2024 legislative period, that is, by February 2024.110

The roadmap provides the framework for negotiations on the Eurodac, the Screening, the Asylum and Migration Management, Crisis and Force Majeure and the Asylum Procedures Regulations and for finalising the Union Resettlement Framework, the recast Reception Conditions Directive (RCD) and the recast Qualification Directive (QD), for which provisional agreements have been previously reached between the European Parliament and the Council. The roadmap also provides new impetus for reaching an agreement on the proposal for a recast Return Directive. Following agreement on the roadmap, in December 2022 the European Parliament and the Council reached an agreement on reception conditions for applicants for international protection, thus endorsing the outcome of negotiations reached in 2018.

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