Please cite as: EUAA, '2.1. Reforming the Common European Asylum System' in *Asylum Report 2024*, June 2024.

2.1. Reforming the Common European Asylum System

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CEAS is a legal and policy framework which was 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.[51]Since its inception, CEAS has been periodically reformed to respond to ever-changing patterns of migration and asylum. The amendments take into account the varied experiences of European countries and mixed migration flows.[52]

In this evolutionary process, the Pact on Migration and Asylum was presented by the European Commission in September 2020 as a set of regulations and policies for Europe to develop a fairer, more efficient, harmonised and sustainable asylum system. The pact is informed by an approach that is meant to be humane and fair with those seeking protection, firm with those who are not in need of protection, and tough with those who exploit the most vulnerable.[53] The pact also represents an integrated solution that caters to the needs of European countries experiencing different and varying degrees of migratory pressures.

Since the presentation of the pact, progress on the agreement had been steady but uneven across the different legislative instruments. Nonetheless, on 20 December 2023, the European Parliament and the Council reached political agreement on the core elements of five key regulations meant to overhaul the EU's legal framework on asylum and migration. These five regulations include:[54]

The **Asylum Procedures Regulation**, which establishes a common procedure that Member States need to follow when receiving and processing applications for international protection. The regulation streamlines procedures and sets standards for the rights afforded to applicants, including the right to free legal counselling in the administrative procedure. The regulation introduces a border procedure to swiftly assess at the EU's external borders whether applications for protection are unfounded or inadmissible. People subject to the border procedure are not authorised to enter the Member State while the procedure is being conducted. A prioritisation system is foreseen to indicate the categories of applicants who must be given priority to determine admission to a border procedure. Unaccompanied minors are excluded from the border procedure, unless they pose a security threat. The regulation also provides a formula to determine adequate capacity for each Member State in terms of reception and

human resources to effectively carry out the border procedure.

The **Asylum and Migration Management Regulation**, meant to replace the Dublin III Regulation, aims to determine which Member State is responsible for the examination of an asylum application. The new regulation clarifies the responsibility criteria and streamlines the rules for the transfer of applicants, when this is necessary. The criterion of first or legal entry still retains prominence in determining responsibility, but the regulation also introduces provisions to foster solidarity with frontline Member States that receive the majority of applications for protection. A new Solidarity Mechanism, which offers flexibility in contributions, foresees mandatory expressions of solidarity to support Member States that cannot cope with the number of irregular arrivals. Solidarity may be expressed by relocating applicants and beneficiaries, deploying personnel or supporting capacity-building. A minimum annual number of relocations is foreseen, currently set at 30,000 people, as well as a minimum annual amount for financial contributions, currently fixed at EUR 600 million.

The **Screening Regulation** aims to strengthen controls at the EU's external borders and quickly identify the correct procedure to determine protection needs. Screening will apply to people who have been apprehended for an unauthorised crossing of an external border by land, sea or air, people disembarked following a search and rescue operation at sea, and people who have made an application for protection at an external border-crossing point or in a transit zone but do not fulfil the conditions for entry. It also applies to people found on EU territory who have escaped external border controls. Member States will establish independent mechanisms to monitor respect for fundamental rights during screening.

The updated **Eurodac Regulation** makes it possible to better tackle irregular movements and supports the implementation of the Asylum and Migration Management Regulation. Instead of applications, it is possible to register individual applicants on the Eurodac database, which allows national authorities to identify more easily people who lodge multiple applications. It helps in identifying the Member State responsible for examining an application and tracing secondary movements. The database is expanded to register additional biometric data, such as facial images, and covers applicants for protection and people who are staying illegally in a Member State. Data will be collected and registered for people aged 6 years and older, compared to the previous limit of 14 years. An additional parameter registered in the database will concern whether a person poses a threat to the Member State’s security, while law enforcement authorities can consult the database to prevent, detect or investigate terrorist activities or other serious criminal offences. Beneficiaries of temporary protection are also registered in the Eurodac database; however, this provision does not apply to persons displaced from Ukraine who currently have temporary protection. The database can also be used to register people who are resettled under national or EU resettlement schemes.

The **Crisis and Force Majeure Regulation** sets an EU framework for national responses to crisis situations, comprising a combination of adjustments to certain rules and provisions of support by the EU and Member States. In crisis or force majeure situations, including situations where migrants are instrumentalised for political purposes, Member States may deviate from certain rules in the asylum procedure. In these situations, for instance, the timeline to register applications for international protection can be extended to 4 weeks instead of 7 days. A

Member State can also request to change the criteria for an application to be examined in the border procedure, for example by increasing the recognition rate threshold for the application of the border procedure from 20% to 50%. In addition, Member States can request to be exempt from taking back applicants from other Member States. Such exceptional measures will always require an assessment by the European Commission and an authorisation from the Council. Finally, Member States can request solidarity contributions from other Member States, building on the ones foreseen in the Asylum and Migration Management Regulation.[55]

The political agreement of December 2023 on these five instruments was a major breakthrough which was achieved through gradual, yet persistent, work by the co-legislators who mobilised resources and rallied the necessary political will. Prior to this agreement, a number of key components of the pact had been already agreed on, including:[56]

- A revised Reception Conditions Directive to further harmonise reception conditions throughout the EU and to reduce the incentives for secondary movements, while also increasing applicants' self-reliance and integration prospects.[57]

- A Qualification Regulation to foster greater convergence in recognition rates and forms of protection across EU countries, introduce stricter rules to sanction secondary movements and strengthen incentives for integration.[58]

- A new EU Resettlement Framework to replace existing ad hoc schemes and provide legal and safe pathways to the EU, set common rules for resettlement and humanitarian admissions; contribute to global resettlement initiatives; and support third countries hosting many persons in need of international protection.[59]

- A recommendation on an EU mechanism for preparedness and management of migration-related crisis through an early warning and forecasting system.

- A recommendation on improving cooperation among Member States in managing private vessels involved in search and rescue activities and guidance on the non-criminalisation of search and rescue humanitarian operations.

- A regulation on the establishment of the EUAA, which entered into force in January 2022, transforming the European Asylum Support Office (EASO) into an agency with a broadened and enhanced mandate.

- The appointment of a Return Coordinator in March 2022 to increase effectiveness, convergence and coordination between the EU and Member States on returns, including of rejected asylum applicants.

- A Voluntary Solidarity Mechanism which was established in June 2022 with the agreement of 23 EU+ countries to support Member States under pressure, including through relocations and financial contributions. The mechanism set the pace toward more permanent solutions which are foreseen in the Asylum and Migration Management Regulation.[60]

Following provisional agreement at the political level, the co-legislators continue to work at the technical level to finalise the details of the new regulations before they are adopted and enter into force. In February 2024, the Permanent Representatives Committee (COREPER) endorsed, on the Council's behalf, the final text of the proposed instruments, with the European Parliament following in April 2024.[61]Apart from the five regulations mentioned earlier, COREPER also agreed on a regulation establishing a return border procedure.[62] This instrument incorporates elements formerly included in the Asylum Procedures Regulation and the Crisis and Force Majeure Regulation and aims to simplify and harmonise the return border procedure for third-country nationals whose application is rejected in the asylum border procedure. The expected entry into force of the instruments is June 2024, but there will be a 2-year period before the entry into application in summer 2026, except for the EU Resettlement Framework which applies immediately.

In March 2024, in light of the political agreement on the new pact, the European Commission issued a communication taking stock of key achievements in developing a durable, fair and firm migration and asylum system, that is both effective and humane in line with European values.[63] The communication presents the achievements made by the EU and its Member States by showing agility and resilience in navigating challenges. A two-track approach was key in catalysing progress by pursuing sustainable structural reform and targeted operational support.

The communication provides a brief overview of the changes the pact will bring in more secure external borders; faster and more efficient procedures for asylum and returns with stronger individual safeguards; and a fair and more effective system of solidarity and responsibility. It also stresses the need for effective implementation of the new framework, including through technical, operational and financial support by the European Commission and EU agencies. Equipped with the experiences and the expertise of the past years, the EU has expanded its range of tools to respond to changing migratory patterns, irregular movements and the smuggling of migrants. The communication emphasises the important role of EU agencies in supporting effective implementation of EU policies and frameworks, including with processing asylum claims, border control and returns.

In 2023, a number of stakeholders continued issuing their commentaries on the European Commission's proposals, identifying possible areas of risk. Commentaries addressed effective access to the procedure and the provision of essential safeguards to this end; what was seen as an expanded and mandatory use of special procedures; the codification of the ‘instrumentalisation’ concept in EU law; safeguarding the right to effective remedies; and maintaining a fair balance in responsibility-sharing. They urged the European Commission and the co-legislators to ensure that the risks are addressed and that the new procedures and rules do not entail a negative impact on the fundamental rights of people seeking protection in the EU.[64]

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