

# Key points to navigate the EU Migration and Asylum Pact

Policy Briefing  
for members



**Eurochild**  
Putting children at  
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# Key points to navigate the EU Migration and Asylum Pact

Informing members on the state of play of the migration legislation at the European Union level

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### Abstract

Following a surge in migration, the European Union (EU) has taken steps for a better management of migration flows. In 2020, the Commission proposed a package of complementary legislations, aiming at a better cooperation among Member States whilst ensuring protection for people fleeing persecution or serious harm in their country of origin.

The EU institutions, after relentless debates, came to an agreement in December 2023, with the intention to vote before the end of their mandate, in June 2024.

This package, also known as the EU Migration Pact, is welcomed with little enthusiasm by civil societies working to promote and safeguard human rights. Indeed, they have raised critical concerns on breach of human rights embedded in the EU Charter of Fundamental Rights.

## Purpose

This policy brief intends to provide a general overview on the Migration and Asylum Pact, soon to be voted. It includes what implications it might have on vulnerable populations including families and children.

### 1. Introduction

In 2015, heightened conflicts broke in the Middle East; Syria and Iraq were at war, civil war in Libya was worsening, conflict was escalating in Egypt and other regions.<sup>1</sup> So many conflicts, causing appalling suffering, insecurity and lack of basic necessities have pushed people onto the roads, in search of safety.

On that same year, the European Union (EU) saw an unprecedented surge (in recent history) in migration, with an estimated 1.4 million irregular arrivals at EU borders. According to Frontex's border apprehensions data, it amounted to a four-fold increase.

The surge in migration to the European Union in recent years has indeed been a significant challenge for the EU. The influx of such a large number of people seeking refuge has put immense pressure on EU countries' resources, infrastructure, and systems for processing asylum claims. Furthermore, ensuring the human rights and dignity of migrants throughout their journey and stay within the EU has been a complex task. Many migrants face exploitation, discrimination, and precarious living conditions, highlighting the need for comprehensive and adequate responses from EU member states.

To address these challenges effectively, the EU has implemented various policies and initiatives aimed at managing migration flows while upholding human rights standards. In 2020, the Commission proposed the reform of the Common European Asylum System, by reviewing and integrating new legislations. Also known as the Pact on Migration and Asylum, this set of legislations has been the object of unrested debates, before a provisional agreement was found in December 2023. The European Parliament and the Council of the European Union are aiming to formally adopt it before the end of their term, in June 2024.

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<sup>1</sup> Stockholm International Peace Research Institute. "The Middle East: 2015 in perspective." In *Armed Conflict in the Middle East*, SIPRI Yearbook 2016. <https://www.sipri.org/sites/default/files/SIPRIYB16c02sl.pdf> (accessed February 26, 2024).

## 2. Challenges encountered by Member States

Member States have faced several challenges, prior to the Pact.

The large diversity of migration routes, countries of origin and motives for migration made the migration flow difficult to address.<sup>2</sup> Indeed, “one-size-fits-all” systems presented serious limitations to foster the necessary sensitivity to best uphold migrant’s rights and needs.

Asylum is a fundamental right implying, first, the right to lodge an application for asylum, and, second, the right to see its application handled with care. It entails formal individual assessments. Nevertheless, for this right to be sustained, asylum systems must adapt to the importance of the flow.

Besides, the line became progressively blurred between “forced” and “voluntary” international migration – according to standards then - due to overlapping push factors.<sup>3</sup>

**Overall, the migration waves brought to light shortcomings and inadequacies in the European Union's asylum policies, prompting a need for a holistic EU approach to migration and avoid ad hoc responses.**

## 3. The emergence of the Pact on Migration and Asylum

For a better management of migration, the European Commission submitted the Migration and Asylum Pact on September 23, 2020.

### 3.1. Pre-existing European instruments

Since 1999, the EU has established a Common European Asylum System (CEAS), setting out common standards and co-operation to safeguard the right to asylum. Originally, the CEAS is made of 5 instruments:

- The Asylum Procedures Directive aims at setting out the **conditions for fair, quick and quality asylum decisions**. Asylum seekers with special needs receive the necessary support to explain their claim and in particular protection of unaccompanied minors and victims of torture is ensured.
- The Reception Conditions Directive ensures that **common standards for reception conditions** (such as housing, food and clothing and access to health care, education or employment under certain conditions) are provided for asylum seekers across the EU.
- The Qualification Directive clarifies **the grounds for granting international protection**. It also provides **access to rights and integration measures** for beneficiaries of international protection.
- The Dublin Regulation enhances the protection of asylum seekers during the process of establishing the **State responsible for examining the application**, and **clarifies the rules governing the relations between states**.

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<sup>2</sup>OECD. "Is this refugee crisis different?" OECD, 2015. <https://www.oecd.org/migration/is-this-refugee-crisis-different.pdf> (accessed February 26, 2024).

<sup>3</sup>Victoria Metcalfe-Hough. "The migration crisis? Facts, challenges and possible solutions." EDI, 2015. <https://cdn-odi-production.s3.amazonaws.com/media/documents/9913.pdf> (accessed February 26, 2024).

- The **EURODAC Regulation** supports the determination of the Member State responsible under the Dublin Regulation and **allows law enforcement authorities access to the EU database of the fingerprints** of asylum seekers.
- The **European Union Agency for Asylum** contributes to improving the functioning and **implementation of the Common European Asylum System; it replaces the European Asylum Support Office.**

Reforms were conducted in 2008, 2013 and 2016, before the Commission introduced a new proposal in 2020.

### 3.2. Structure and substance of the Pact

The Migration and Asylum Pact is a package of 9 legislations, **introducing or revising** already existing CEAS instruments.

#### Recast of the CEAS's legislations:

- Asylum Procedures Regulation (to replace the Directive),
- Eurodac Regulation,

#### New legislations:

- Screening Regulation,
- Asylum and Migration Management Regulation,
- Crisis and Force Majeure Regulation,
- Migration Preparedness and Crisis Blueprint,
- Recommendation on Resettlement and complementary pathways,
- Recommendation on Search and Rescue operations by private vessels,
- Guidance on the Facilitators Directive

The Pact also supplements legislations from the 2016 reform that were yet to be adopted, namely the:

- Reception Conditions Directive
- Qualification Regulation (to replace the Directive)
- Return Directive
- EU Resettlement framework

### 3.3. State of play

Owing to difficulties in the negotiation process, in September 2022, the co-legislators **agreed on a roadmap to adopt the nine files of the Pact, and the files inherited from the 2016 proposals, by the end of the legislature** (June 2024).

As of now, only two files (not part of the roadmap) were adopted:

- the EU Asylum Agency Regulation

- The Blue Card Directive

Contrary to the roadmap, the European Parliament did not agree on the Return Directive, which is now at a standstill.

On December 2022, a political agreement was reached on 3 files:

- Reception Conditions Directive
- EU Resettlement Framework
- Qualification Regulation

Therefore, 5 files remained in inter-institutional negotiations:

- Crisis and Force Majeure Regulation
- Asylum and Migration Management Regulation
- Asylum Procedures Regulation
- Screening Regulation
- Eurodac Regulation

**Triologues**, also known as "jumbo negotiations," involving the Parliament, Council, and Commission to conclude discussions on outstanding files, commenced on December 7, 2023, with no agreement reached. They continued on December 18 and 19, 2023, **resulting in a political agreement**.

### 3.4. Content of the Pact

ASYLUM PROCEDURE REGULATION
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The asylum procedure regulation aims at establishing a **common procedure** for international protection by simplifying, streamlining and consolidating procedural arrangements.

Following the negotiations, the key agreements are as follow:

- The new rules will make the examination of asylum claims more efficient, with a **six-month benchmark for a first decision** and shorter time-limits for manifestly unfounded or inadmissible claims.
- **Faster border asylum procedures – which can last up to 12 weeks** - can be applied
- Asylum applicants whose claims are rejected should be **returned in less than 12 weeks**.
- Will always be subjected to the **border asylum procedure immediately after screening**
  - people considered a danger to national security or public order
  - if the applicant has misled the authorities by presenting false identity or nationality information
  - those from countries with asylum recognition rates below 20%
- **Provision of free legal counselling** to applicants in all administrative procedures.
- Ensured that **unaccompanied minors would not be subject to border procedures, unless** they present a security risk, obtained guarantees that families with children

would not be a priority for uptake into the border procedure, and should also be offered appropriate reception conditions.

- **Adequate capacity** for carrying out the border procedures: **30,000 reception places** and member states will have to ensure they are able to carry out the border procedures on their territory. It will be increased gradually over the three years following the entry into force of the new rules.
  - When maximum capacity is reached asylum applicants will be directed into the ordinary asylum procedure to prevent overcrowding.
  - Commission will have to determine the “adequate capacity” within two months following their entry into force.
  - Member states will then have six months to comply with the Commission’s decision.
- **Safe country concepts** can only be applied when the applicant cannot provide arguments against.
- Member states will continue to use national lists of safe countries, in the longer term there should be a **convergence towards an EU list of safe third countries** and safe countries of origin.

EURODAC REGULATION
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The regulation allows law enforcement at border controls to collect various data, to help identify third-countries national wishing to enter the EU, and determinate the responsible Member State to proceed their application under the Dublin Regulation.

Following the negotiations, the key agreements are as follow:

- **Introduction of biometric data:**
  - adding facial images to existing fingerprinting databases
  - additional information, including name, surname, nationality and date and place of birth.
  - authorities will also include information on decisions to remove and return the person or relocate them.
- **Age of identification has been lowered from 14 to 6 years old**
  - **Data should** be collected by trained staff in a child-friendly manner.
- Authorities will be able to **record** in the system **if a person presents a threat** to internal security, if
  - the person is violent
  - unlawfully armed
  - links to terrorism or a terrorist group
  - involved in offences
- Individuals who have been disembarked in an EU member state following a search and rescue operation **will be recorded separately** and used for statistical purposes in order to provide a more accurate picture of migratory flows into the EU.

## SCREENING REGULATION

The proposal seeks to implement a standardized pre-entry screening procedure for third-country nationals, at the external borders of the EU.

Following the negotiations, the key agreements are as follows:

- The border procedure will **include**
  - Preliminary health and vulnerability checks
  - Identification based on information in European databases
  - Registration of biometric data in the appropriate databases (i.e. fingerprint data and facial image data)
  - Security check through a query of relevant national and Union databases (via the European search portal)
  - The filling out of a de-briefing form
  - Referral to the appropriate procedure
- The new screening rules will **apply to** people that do not fulfil the conditions to enter an EU member state, who were apprehended entering the EU irregularly outside border crossing points or disembarking following a search and rescue operation, or have applied for international protection at a border crossing
- Can be **carried out at any adequate location designated by each EU country**
  - Third-country nationals found within the EU's territory will be subject to screening only if they have crossed an external border to enter the territory of a member state in an unauthorised manner
  - Third-country nationals who have undergone the screening once will not have to repeat it
- **Checks can last seven days** at most and include identifying or verifying someone's identity, and a preliminary health and vulnerability assessment.
- Third-country nationals undergoing screening have to be available to authorities to perform the above checks and **may be detained** to ensure it.
  - The best interests of the child, in particular unaccompanied minors, should always be a primary consideration during screening. **A representative should be appointed to support unaccompanied minors in the screening process.**
  - Even if the unaccompanied minor is not represented, they should always have the right to apply for international protection. In other words, being represented should not be conditional to lodging an application for international protection.

## ASYLUM AND MIGRATION MANAGEMENT REGULATION

The Regulation will replace the Dublin Regulation, establish a common framework that contributes to the comprehensive approach to asylum and migration management, and ensure sharing of responsibility through a new solidarity mechanism.

Following the negotiations, the key agreements are as follows:



- **All member states will have to contribute to helping EU countries recognised as being under migratory pressure**
  - **A solidarity pool will be established every year, to which all EU countries will have to contribute with relocations and/or financial contributions - each country will be free to decide on the type of contribution, or a combination of them, they want to give.**
    - The new regulation, as agreed, sets the minimum threshold for relocations at 30,000 applicants and the financial contribution at €600 million
    - A possibility will be granted for Member State to **request another member states to take responsibility** for examining the applications for international protection of those persons that are to be returned to the benefitting member state, **instead of contributing with relocations**
  - The **recurrence of search and rescue operation** will be taken into account when assessing migratory pressure
  - **Requests for international protection and relocations will not include a choice** to which member state they should be relocated.
    - consideration will be given to addressing vulnerabilities, including those of unaccompanied minors and after search and rescue.
  - **Financial support can be directed to improve the asylum, reception and migration systems of Member States and concerned third countries.**
  - **Responsibility to examine applications for international protection will answer to new criteria;**
    - **family reunification cases will be prioritised** and possible family links will be identified as quickly as possible
    - **Additional criteria are:** diplomas obtained in a member state, existing meaningful relations, and language knowledge.
    - **free legal counselling** on these criteria will be provided, including information on rights and obligations during all procedural steps.
- ➔ **Work is expected to continue at technical level to flesh out the details.**

REGULATION FOR SITUATIONS OF CRISIS AND FORCE MAJEURE IN THE FIELD OF MIGRATION AND ASYLUM

This proposal concerns **the application of the solidarity mechanism** as set out in the proposal for a regulation on asylum and migration management (AMMR) **for exceptional cases involving the mass influx or irregular arrival** of third-country nationals or stateless persons in a Member State, potentially posing a risk to the functioning of the common European asylum system (CEAS).<sup>4</sup>

It would replace the Temporary Protection Directive, in force since 2001, allowing to evacuate displaced persons from third-countries when first line countries asylum systems are overwhelmed.

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<sup>4</sup>European Parliament. "Crisis and force majeure regulation", 2024.  
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659448/EPRS\\_BRI\(2021\)659448\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659448/EPRS_BRI(2021)659448_EN.pdf) (accessed February 26, 2024).

Following the negotiations, the key agreements are as follow:

- The mechanism will be triggered when **an exceptional situations of mass arrival** amounts to a crisis.
- **Arrivals** can happen by land, air or sea (including search and rescue), and will include displacement organised by third country or hostile non-state actor. However, humanitarian aid operations should not be considered as a case of instrumentalisation when there is no aim to destabilise the EU or a member state.
- **To be considered a crisis**, the situation must:
  - render the asylum, reception, child protection services, or the return system of a given member state non-functional
  - and may also have serious consequences for the functioning of the common EU asylum system.
- Regarding the **decision-making and solidarity measures**
  - Member States will make a request to the Commission, which will assess the situation within two weeks and adopt a decision on the presence or otherwise of a crisis situation
  - The Commission will make a proposal to the Council on solidarity measures and derogations, together with a recommendation establishing the categories of persons who should be entitled to prima facie protection.
- In crisis situations, the regulations plans possible derogations of the normal migration and asylum procedures;
  - the registration of asylum applications could take up to 10 days, with the border procedure extended for both asylum and return border procedures by an additional six weeks each
  - in situations of mass influx, the threshold for the border procedure will apply to applicants with up to 50% recognition rate
  - in instrumentalisation situations, the border procedure would be applied to all arrivals
    - After an individual assessment, vulnerable persons and families with children under 12 years could be excluded from the border procedure.

#### 4. Implications for Children and Families: Understanding the Impact

Civil societies and other actors in the fields of human rights raised the alarm regarding the impact the Pact would have on families and children in migration, should decision-makers proceed.

Overall:

- Children **have not been ruled out from the possibility of detention at the external borders for screening purposes, as framed by the Screening Regulation.**
  - **The worry is that systematic detention** of families with children will become the norm.
- Children **will not be exempt from accelerated evaluation of their protection needs at borders, by application of the Crisis and Force Majeure Regulation.**  
However, we know that:

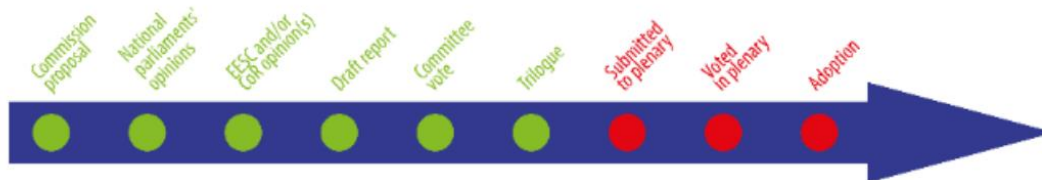
- Children often **struggle to prove their age** due to the lack of documents and language barriers, leading authorities to subject them to invasive and potentially traumatizing examinations to establish their age, even though this often yields unreliable results. As the **risk of mistakes in the assessment is much higher for children treated as adults.**
- **Authorities often take fundamental decision for migrant's life and well-being after a quick and superficial assessment. Children lack access to information about their rights**, support and legal assistance, which can seriously **jeopardise the child's access to protection and affect their mental and physical health.** Moreover, there are no materials in child friendly language.

As a result, many of them will **risk to not be granted asylum or other forms of protection based on their personal history and needs, nor will they be able to access education, health, housing or psychosocial support as any other child in Europe.**

- **Children are easier victims of violence, abuse and human trafficking;** by not granting them access to the protection authorities and services, this risk will increase.
- While the Pact, especially the Asylum and Migration Regulation, promotes family reunification, siblings are not included in the frame. Therefore, **the risk of not being reunited with the entire families is much higher.**
- Under the Crisis and Force Majeure Regulation, countries will be allowed to **opt out of a broad range of EU asylum rules** in times of increased arrivals and in case of so-called 'instrumentalisation' of migrants or 'force majeure'.
  - These exemptions risk, in practice, **breaching international obligations** under refugee and international human rights law
  - It increases the risk normalising disproportionate emergency measures at European borders, setting a dangerous precedent
- Plus, the EU is resolved to preserve a principle called the **"legal fiction of non-entry"**, whereby individuals who set foot in a processing facility– which can be anywhere in the EU – aren't automatically regarded as being on EU soil, even though they technically are, because their presence has not been authorised. **This allows the lowering of standards, such as more strict and swift border procedures.**
- The tightened control at the EU external borders will push people to use dangerous routes.

## Next steps

The provisional agreement needs to be formally adopted by the Parliament and Council before it can become law.



## Terminology

The European Union and the international community understand key migration terms, as follow:

### Migrant

An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.

In the European Union context, it is understood as someone who establishes their usual residence in the territory of an EU/EFTA Member State for a period that is, or is expected to be, of at least 12 months, having previously been usually resident in another EU/EFTA Member State or a third country.

### Asylum

A form of **protection** given by a State on its territory, based on the principle of **non-refoulement** and internationally or nationally recognised refugee rights and which is granted to a person who is unable to seek protection in their country of citizenship and / or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular **social group** or political opinion.

Asylum is a fundamental right and an international obligation for countries, as recognised in the 1951 Geneva Convention on the protection of refugees.

### Asylum seeker

An individual who is seeking international protection. In countries with individualized procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it.

A **third-country national** or **stateless person** who has made an application for protection under the **Geneva Refugee Convention and Protocol** in respect of which a **final decision** has not yet been taken.

## Refugee

In the *EU context*, either a third-country national who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the **protection** of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Art. 12 (Exclusion) of Directive 2011/95/EU (Recast Qualification Directive) does not apply.

## Unaccompanied or separated children

Third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States (Art. 2 (f) of the Temporary Protection Directive 2001/55/EC).

A 'separated child' is a child who arrives on the territory of the Member States accompanied by relatives or known (non-related) adults, whereby sometimes the latter have been provided by the parent(s) an authorisation to travel with the child and/or provide temporary care.

## Children in migration

All third country national children [...] who are forcibly displaced or migrate to and within the EU territory, be it with their (extended) family, with a non-family member (separated children) or alone, whether or not seeking asylum.

Definitions are extracted from the European Migration Network glossary, the International Organisation for Migration key migration terms and the Communication on the protection of children in migration in 2017.

### **Further resources:**

- ECRE Comments on the proposal for an Asylum Procedures Regulation
- EUAA, Applying the concept of safe countries in the asylum procedure, 2022.
- Meijers Committee, Comment on the Migration Pact – Crisis and Force Majeure Regulation, 2020
- UNHCR, Global Trends Forced Displacement in 2015, 2015.
- Pediatrics, The Effects of Armed Conflict on Children, 2018 (reaffirmed in 2023).
- UNSG, In safety and dignity: addressing large movements of refugees and migrants: report of the Secretary-General, 2016.

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