



## Explanatory memo on the Pact on Migration and Asylum

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#### I. General questions

#### **What legislation does the Pact on Migration and Asylum (the Pact) entail?**

The Pact on Migration and Asylum was presented by the Commission in September 2020. Alongside non-legislative initiatives, the Pact represents a fresh start on managing migration. Over three years later, the European Parliament and the Council reached political agreement on 5 of the key files in a historic breakthrough. In total, 10 new legislative texts have now been adopted by the European Parliament. Together, the set of reforms will establish a new legal foundation for a fairer and more efficient way of managing migration. Agreement has been reached on the following set of interlocking laws:

Title	Description

<p>1. <a href="#">Screening Regulation and Amending Regulation to facilitate screening</a> (ECRIS-TCN)</p>	<p>All irregular migrants will be registered and subject to identification, security, and health checks.</p>
<p>3. <a href="#">Asylum and Migration Management Regulation</a> (AMMR)</p>	<p>Establishes a new permanent solidarity mechanism amongst Member States to balance the current system where a few countries are responsible for the majority of asylum applications. Establishes clear rules on responsibility for assessing asylum applications and preventing secondary movements.</p>
<p>4. <a href="#">Asylum Procedure Regulation</a> (APR)</p>	<p>Establishes a common, fair and efficient procedure for deciding on an asylum application, while limiting abuse and removing incentives for secondary movements across the EU. Together with the Return Border Procedure Regulation it also establishes a mandatory border procedure for both the asylum and return process at the external border.</p>
<p>5. <a href="#">Crisis and Force Majeure Regulation</a> (incorporating provisions from the proposal for an Instrumentalisation Regulation)</p>	<p>Provides quick protocols for situations of crisis and instrumentalisation of migrants, to be supplemented with operational assistance and funding in cases of emergency.</p>
<p>6. <a href="#">Eurodac Regulation</a></p>	<p>Establishes an interoperable, asylum and migration database to support the asylum system, help manage irregular migration and support the implementation of the Resettlement Regulation and the Temporary Protection Directive.</p>
<p>7. <a href="#">Reception Conditions Directive</a></p>	<p>Harmonises reception conditions across the EU, ensuring dignified reception standards throughout the EU and reducing incentives for secondary movements.</p>
<p>8. <a href="#">Qualification Regulation</a></p>	<p>Harmonises protection standards in the EU to ensure uniform standards for protection and rights granted to refugees and prevent 'asylum shopping'.</p>
<p>9. <a href="#">Resettlement Framework Regulation</a></p>	<p>Creates a common EU framework for EU Member States to resettle refugees from outside EU territory.</p>
<p>10. Regulation establishing the European Union Agency for Asylum</p>	<p>Established a fully-fledged European Union Agency for Asylum (EUAA) able to provide a rapid and full service to Member States in normal times as well as in times of particular pressure.</p>
<p>11. Single Permit Directive[1]</p>	<p>Streamlines the process of obtaining a single work and residence permit for applicants and employers.</p>
<p>12. Blue Card Directive[2]</p>	<p>Assists employers in recruiting highly skilled migrants from outside the EU by making the process easier and more accessible.</p>

There are two legislative proposals still pending adoption:

Return Directive	Streamlines and updates rules in relation to return procedures.

Long-Term Residents Directive	Makes it easier to acquire EU long-term residence status by simplifying the admission conditions.
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### What will the Pact change?

The Pact creates a **common European system** that sets up a new process for managing migration in normal times, while also catering for crisis situations and instrumentalisation.

### A European system to control EU external borders, ensure fairness between Member States and protect people in need.

1. **More secure external borders:** All irregular migrants will be registered upon arrival and will undergo thorough identity, security, health checks and vulnerability screening. Those who are unlikely to need protection, present a security risk or mislead the authorities will be subject to a fast-track border procedure. This procedure allows for a quick examination of their asylum applications and, if these are rejected, for swift return, all without the person being authorised to enter the territory of the Union. All Member States will be required to have the capacity to host a certain number of asylum seekers for the duration of the procedures in adequate conditions. Strong legal safeguards will apply, and unaccompanied minors will be exempt from the border procedure unless they pose a security threat. All Member States will need to ensure independent monitoring of fundamental rights during screening and asylum border procedures. There will also be full crisis protocols in place, which will provide for a stable and predictable framework at Union level to manage situations of crisis. These include a reinforced solidarity component ensuring that all the needs of the Member State concerned will be met, as well as derogations from normal time limits to cater for the specific situations.
2. **Fair and firm internal rules on asylum and return:** The new rules will put in place more effective asylum procedures with shorter time limits and stricter rules for abusive or subsequent applications. These rules are balanced against important guarantees for the rights of individuals, including free legal counselling throughout all procedures, with particular attention to vulnerable groups. The new rules will also set up EU-wide standards for reception conditions, as well as harmonising the qualification and the rights of beneficiaries of international protection.
3. **Striking a balance of solidarity and responsibility:** For the first time, the Union will have in place a permanent mandatory solidarity mechanism. No Member State will be left alone under pressure. At the same time, each Member State will contribute to the solidarity efforts in a flexible way, and they will be able to choose the type of solidarity they provide. The system will also include effective rules to detect and prevent secondary movements.

Before the Pact	With the Pact
<b>Secure external borders</b>	
<b>No harmonised registration, screening or border procedures across Member States.</b>	<b>New mandatory registration, screening of identity, security, health and vulnerability.</b>
	Mandatory border procedures for those who are unlikely to be in need of international protection, present a security risk or mislead the authorities.

<p><b>No dedicated resources for screening at external borders and carrying out the border procedures.</b></p>	<p>Uniform health, identity and security checks of migrants who cross the EU external borders illegally.</p> <p>Screening will have to be completed in a limited timeframe: 7 days for the screening at the external borders and 3 days for the screening of persons apprehended within the territory.</p> <p>Quick channelling to the appropriate procedures (border procedure, regular asylum or return procedures).</p>
<p><b>No obligation to have in place independent monitoring mechanisms</b> to ensure respect of fundamental rights.</p>	<p>Obligation to set up independent monitoring to ensure the respect of fundamental rights during screening and border procedures.</p>
<p><b>Fast and efficient procedures</b></p>	
<p><b>Current different procedural arrangements in Member States.</b></p>	<p>Common, fair and efficient procedures for deciding on whether to grant international protection, while removing incentives for unauthorised movements across the EU.</p>
<p><b>Flexible and divergent rules for abusive claims across the Member States, which leads to secondary movements.</b></p>	<p>Stricter common rules for abusive or subsequent applications, with improved ability to track movements through the Eurodac database.</p>
<p><b>No free legal assistance at first instance.</b></p>	<p>Free legal counselling throughout all stages of the asylum procedure, and specific attention given to vulnerable groups.</p> <p>Guidance on the administrative stage of the procedure including information on the rights and obligations, assistance with lodging asylum applications.</p> <p>Free legal assistance and representation during the appeal.</p>
<p><b>Divergent reception standards and no obligation to have contingency plans in place to always ensure sufficient reception capacity.</b></p>	<p>EU-wide standards for reception conditions and obligation to set up contingency plans.</p>

<b>A patchwork of practices across Member States creating an incentive to 'asylum shop'.</b>	Harmonised criteria for protection will ensure applicants have the same chance of getting asylum under the same conditions wherever they apply in the EU.
<b>Effective system of solidarity and responsibility</b>	
<b>Ad-hoc and voluntary solidarity.</b>	A permanent solidarity framework with clear steps to ensure that Member States receive the solidarity, and the choice by each Member State on the type of solidarity to be provided.
<b>Unclear obligations for applicants and ineffective rules to fight secondary movements.</b>	<b>Clear obligations for applicants to apply in the Member State of first entry.</b>
<b>Crisis protocols and action against instrumentalisation</b>	
No specific legal framework to ensure that Member States can address situations of crisis, including instrumentalisation, or force majeure in the field of asylum and migration.	The Crisis Regulation provides quick protocols for situations of crisis and instrumentalisation of migrants, to be supplemented with operational assistance and funding in cases of emergency.

### **When will implementation of the Pact start? How much time will Member States have to implement the new rules?**

The legal proposals will officially enter into force 20 days after publication of the laws in the Official Journal. Member States will have two years after the entry into force of the instruments to implement the Pact in full.

However, preparatory work, coordinated by the Commission, has already started. The reform provides for the preparation of a Common Implementation Plan and National Implementation Plans to ensure all Member States advance in the same direction and are ready to implement the Pact from day one. The Plan – due to be presented by the Commission by June – will identify the gaps and operational steps needed to ensure all Member States put in place the legal and operational capabilities required to successfully start applying the new legislation by 2026. EU support will include technical, operational and financial support provided by the Commission and EU agencies.

### **Will the Pact solve all migration challenges?**

The Pact sets out clear and common rules to ensure a fair and firm way of managing migration. It provides for a solid legal framework to ensure that each Member State has the flexibility to address the specific challenges it faces, while also ensuring that no Member State is left alone under pressure.

This will not preclude the need to continue dealing with specific challenges that already exist now or may arise in the future. The Commission will continue to work on the operational track, supporting Member States, together with the EU Agencies to manage migration with targeted actions.

A whole-of-route approach has been developed, working together with countries of origin and transit. The Commission has launched four EU Action Plans – focusing on the Western Balkans, Central Mediterranean, Western Mediterranean and Atlantic, and Eastern Mediterranean routes, reinforcing

EU support to Member States with the full range of policy and operational measures at the EU's disposal. In addition, the Commission will enhance the cooperation with partner countries through a new approach, which embeds migration in international partnerships in order to prevent irregular departures, fight migrant smuggling, reinforce cooperation on readmission and promote legal pathways.

## **II. Specific questions**

### **A. Secure external borders**

#### **Robust screening**

##### **How will the new screening work? What is the added value of the Screening Regulation?**

The Screening Regulation sets up uniform rules for the EU to make sure that people entering the territory illegally undergo identity, security, health and vulnerability checks and are channelled towards the appropriate procedure (border procedure, regular asylum procedure or return procedure). The screening also applies to people inside the Schengen area who would have avoided checks at external borders.

Member States' authorities will have to carry out mandatory preliminary health and vulnerability checks and identity and security checks on all non-EU nationals that cross the EU borders illegally if they are apprehended at the external borders or within the territory. This will have to be done in a limited time, 7 days for the screening at the external borders and 3 days for the screening within the territory. This screening will reinforce security within the Schengen area as it will ensure that irregular migrants who are being screened do not pose any threat to internal security. They will also help protect public health and to provide migrants with treatment in case of urgent or essential need.

The preparatory work for implementation will already start now, with Member States putting in place the necessary infrastructure, acquiring the necessary equipment and adjusting their existing rules. This Regulation will apply to all Schengen States, meaning all EU Member States apart from Ireland, and also to the four Schengen Associated Countries, namely Norway, Liechtenstein, Switzerland, and Iceland.

##### **How will you ensure that vulnerable groups are protected in this procedure?**

The new Screening Regulation will ensure fast **identification of the correct procedure applicable** to a person that arrives at EU territory without fulfilling the entry conditions. Faster determination of the appropriate procedure will help to manage the applications of people in need of international protection and vulnerable people requiring special assistance, including if many people arrive at the same time. The purpose of the health checks is to do a preliminary assessment of the person's health to protect public health and to provide them with treatment in case of urgent or essential need.

The Screening Regulation also introduces a **preliminary vulnerability check** to be carried out by trained staff. These checks will help identify whether a person might be a stateless person, a victim of torture or other inhumane or degrading treatment or have special needs. This will allow vulnerable people to receive the adequate protection in the ensuing asylum or return procedures. The new rules also have specific guarantees to protect minors.

All Member States will need to ensure a **new independent monitoring mechanism**, which will enhance transparency and accountability during screening and border procedure, while at the same time promote the respect of fundamental rights.

##### **What is the new independent monitoring mechanism?**

The new independent monitoring mechanism is a key element to promote respect for fundamental rights for screening and procedures at the border. Member States are obliged to set up and finance independent national monitoring bodies tasked with monitoring compliance with Union and international law during the screening; and ensuring that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and trigger, where necessary, investigations into such allegations.

Member States will need to put in place adequate safeguards to guarantee the independence of the mechanism. National Ombudspersons and national human rights institutions, including National Preventive Mechanisms, are to participate in the operation of the mechanism and may be appointed to act as independent monitors.

The independent monitoring mechanism may also involve relevant international and non-governmental organisations and public bodies independent from the authorities carrying out the

screening. The independent monitoring mechanisms will have the power to issue annual recommendations to Member States to improve the respect of fundamental rights.

## **Eurodac asylum and migration database**

### **What is new in the Eurodac database?**

The new Eurodac Regulation will expand the EU's identification database, supporting authorities to tackle irregular migration, track secondary movements, and improve returns of irregular migrants.

Member States will be obliged to register the following categories of people in Eurodac: asylum applicants; people who had crossed the EU's external border illegally; people disembarked following a search and rescue operation as well as those found to be staying illegally in the territory of a Member State; people registered for an admission procedure under the Resettlement Regulation; people resettled under a national scheme; and beneficiaries of temporary protection. This will help facilitate the identification of individuals and give authorities more information allowing for speedier asylum procedures and better detection of secondary movements.

### **How long is data stored in the Eurodac database?**

The fingerprints of those who entered illegally will remain in the system for 5 years, as opposed to the current 18 months, making it possible to retrieve information on individuals in the system for a longer period of time. This will have a more effective impact on the way the wider asylum rules will be applied. In practice, it will limit abuse and 'asylum shopping' as it will prevent people from choosing the Member State where they want to receive protection, since their identity will still be traceable. For asylum applicants, the storage period remains 10 years.

The storage period is 5 years for individuals that are: apprehended staying illegally on the territory of a Member State; disembarked following Search and Rescue operations; resettled under the Union Framework and under national schemes. For people who have been refused resettlement and for those whose resettlement admission procedure was discontinued, the retention period is 3 years. For future beneficiaries of temporary protection, the data will be stored for the duration of the protection (one year renewed subsequently).

### **What are the safeguards for minors?**

Recording the biometric data of minors will allow authorities to identify these children, but also help trace missing children who may have been victims of human traffickers and sexual exploitation.

The new Regulation includes **additional safeguard for minors that will be registered in Eurodac** (i.e. minors as of 6 years of age) allowing for the protection of those children who may become separated from their families.

An unaccompanied minor must be assigned a representative or, where a representative has not been designated, a person trained to **safeguard the best interests of the minor** and general well-being, throughout the time when biometric data are taken. If the minor is accompanied by an adult family member, they must accompany the minors when taking the biometric data. The official responsible for taking the biometric data of a minor should also receive training so that sufficient care is taken and to guarantee that the process is child friendly.

## **Border procedure and returns**

### **What is a border procedure?**

Following the screening, if a person applies for asylum, their application must be examined under the border procedure. The border procedure is a type of accelerated asylum procedure.

The border procedure will **apply to a limited number of cases** strictly defined in the legislation where the applicant is a national of countries with low recognition rates for international protection; or misleads the authorities; or poses a threat to national security. For others, the regular asylum procedure will apply.

The border procedure will **apply for a limited duration**. It can only last 12 weeks (3 months). This period may be extended to 16 weeks if the applicant is relocated to another Member State. This gives sufficient time to properly assess cases that in principle are not supposed to be complex, ensuring that those with no legal right to stay can be returned in a faster and dignified manner. However, the border procedure should not be applied, or should cease to apply, where the authority considers during the examination of the claim that the case is too complex or is likely to be well-founded.

If there is no decision within those 12-16 weeks, applicants will be referred to the regular asylum

procedure and allowed entry to the territory of the Member State.

In case an application is rejected in the asylum border procedure, the third-country national is transferred to the **return border procedure**. That procedure may take a maximum of 12 weeks with a view to the swift return of those with no right to stay in the EU.

All the **necessary safeguards and guarantees** will apply during the border procedure.

**Adequate reception capacity must be guaranteed:** the reform **ensures that there will be no overcrowding**. It introduces the concept of 'adequate capacity' to make the border procedure manageable by ensuring predictability for authorities. All Member States will be required to have the capacity to host a certain number of asylum seekers for the duration of the procedures in adequate conditions. When the adequate capacity of a given Member State is reached, the Member State concerned is no longer obliged to place additional people in the border procedure; instead, the Member State can channel applicants to the accelerated procedure within the territory.

The concept of 'adequate capacity' requires Member States to set up the reception capacity and human resources, including qualified and well-trained personnel, required to examine at any given moment an identified number of applications and to enforce return decisions.

Although the border procedure should - as a rule - be carried out at the border or transit zones, Member States will have flexibility to carry out the border procedure in locations within the territory.

**Fundamental rights must always be respected.** The Charter of Fundamental Rights of the European Union applies when Member States implement EU law. The EUAA and the Commission will pay special attention to conditions in the border procedure. If needed, the Commission can request the EUAA to carry out an ad-hoc monitoring under the new monitoring mechanism of the Agency. If the reception conditions for minors and their family members are not adequate, the border procedure for families with minors will need to be suspended based on a recommendation by the Commission.

### **Will asylum applicants be detained during the border procedure?**

Detention can be applied in the border procedures, but there is no provision allowing Member States to impose automatic detention to applicants of international protection. Detention can only be applied in accordance with all the safeguards provided for in the Reception Conditions Directive – i.e. it can only be used when it proves necessary and proportionate on the basis of an individual assessment, **as a measure of last resort** when less coercive measures are not possible, and subject to judicial scrutiny.

In this context, the reform requires the development of guidance on alternatives to detention and for the Commission to monitor the application of possible detention in the border procedure, while ensuring that the applicant does not abscond.

### **How will returns be made more effective in the context of the border procedure?**

The new legislation foresees that negative asylum decisions should be issued together with a return decision, and that appeals should be handled within the same time limits. Therefore, as soon as a person gets a negative decision in the asylum border procedure, they will also get a return decision and be transferred directly to the return part of the border procedure. This will ensure a seamless link between both the asylum and return process. There will be continuity between the authorities involved in the process, helping to avoid situations where the person absconds or enters another territory.

In the border procedure, practical arrangements will need to be put in place to ensure that people are returned swiftly. This includes setting up efficient return counselling structures, measures to restrict movement as needed (alternatives to detention) and practical arrangements to ensure that travel documents can be obtained from the relevant third country of return.

At operational level, Frontex will provide support in all phases of the return process (pre-return, return operations and post-return including reintegration support). Moreover, the EU Return Coordinator is working on a Roadmap within the High-Level Network for returns on targeted actions for more efficient returns, focusing particularly on seven priority countries: Iraq, Bangladesh, Pakistan, Tunisia, Nigeria, Senegal and the Gambia, which will feed into the efficient functioning of the border procedure.

## **Crisis protocols and action against instrumentalisation**

### **How does the Pact enhance the EU's preparedness to deal with crisis situations?**

Even well-prepared systems need to have a framework to deal with exceptional situations, such as [crises](#) or [force majeure](#). The Crisis and force majeure Regulation provides a stable and predictable



framework at Union level to manage situations of crisis or force majeure, with a reinforced solidarity component ensuring that all the needs of concerned Member States will be met, as well as procedural derogations for Member States.

Derogations are also foreseen to cater for the specific situation of instrumentalisation, providing Member States with robust and targeted means to protect our external borders while guaranteeing access to asylum and respect for fundamental rights.

### **What is a crisis situation? How is it defined?**

The Regulation defines a situation of crisis as an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including those disembarked following search and rescue operations. The main criterion is that the situation renders a Member State's asylum, reception (including child protection services), or return system non-functional, to the point that there may be serious consequences for the functioning of the Common European Asylum System as a whole.

### **What is a situation of instrumentalisation?**

A situation of instrumentalisation is defined as a situation where a third country or hostile non-state actor encourages or facilitates the movement of non-EU nationals and stateless people to the external borders or to a Member State. This being done with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.

### **What constitutes a 'force majeure' situation?**

'Force majeure' situations refer to abnormal and unforeseeable circumstances outside a Member State's control, the consequences of which could not have been avoided, such as natural disasters and pandemics. This implies an unforeseen situation that prevents the Member State from complying with obligations under the Asylum and Migration Management Regulation and the Asylum Procedure Regulation.

### **What flexibility do Member States have in crisis situations?**

Member States facing a situation of **crisis, instrumentalisation or force majeure** may derogate from certain responsibility-related rules provided for in EU asylum law, including:

- the time limit to register applications for international protection is extended from 7 days to four weeks;
- A longer duration of border procedure from 12 weeks to 18 weeks;
- Extended time limits for determining the Member State responsible (only in crisis mass arrivals and force majeure situations);
- Derogations to the application of the border procedure and extension of the scope of the border procedure, depending on the situation.

When a situation of mass arrivals is of such an extraordinary scale and intensity, that the EU asylum system risks becoming non-functional because it could create serious deficiencies in the treatment of applicants, the Regulation foresees the possibility for the affected Member State to be relieved of its obligation to take back applicants.

### **What are the safeguards for fundamental rights in the Crisis Regulation?**

The Crisis Regulation has a robust mechanism in place to ensure that fundamental rights are upheld.

The Regulation must be implemented in full compliance with the Charter of Fundamental Rights, ensuring the fundamental rights of non-EU nationals and stateless people. This includes ensuring that the right to asylum is respected and that necessary safeguards also foreseen in the asylum legislation are in place.

The crisis mechanism is used only in exceptional circumstances and for the time strictly necessary to address situations of crisis, instrumentalisation or force majeure. Due to the importance of ensuring this, the Commission and Council keep the situation under constant monitoring, respecting the principles of necessity and proportionality. If it considers necessary, the Commission can also request the EUAA to initiate a monitoring exercise of the concerned Member State's asylum and reception system.

Member States must respect fundamental rights at all times. When it comes to the derogation from registering applications for international protection (in situation of crisis, including instrumentalisation, or force majeure), priority should be given to applications from minors and

family members and from people with special procedural needs or special reception needs. Applications that are likely to be well founded may be prioritised.

Under the Crisis Regulation, a Member State is authorised to extend the scope of the border procedure to people whose applications have an EU-wide recognition rate of 50% or lower or to reduce the threshold of the mandatory border procedure to 5% (instead of applying it to all applicants below a 20% recognition rate).

In a situation of instrumentalisation, a Member State is authorised to extend the scope of the border procedure to all applicants. However, in such situations, attention will still need to be given to minors below the age of 12 and their family members. Therefore, the concerned Member State has to\*:

- exclude from the border procedure minors below the age of 12 and their family members and people with special procedural or special reception needs or;
- cease to apply the border procedure when it is determined, following an individual assessment, that applications from minors under the age of 12, their family members and people with special procedural or special reception needs are likely to be well founded.

Detention should only be used as a last resort, for the shortest time possible, and never in prison accommodation or any other facility destined for law enforcement purposes. Everything possible must be done to ensure that adequate alternatives are found for minors and family members. Minors should also not be separated from their parents or carers.

## **B. Fast and efficient procedures**

### **Clear asylum rules**

#### **What are the obligations for asylum applicants?**

**The Asylum Procedure Regulation introduces clear and strict rules on obligations of applicants during the asylum procedure:** information which needs to be provided for the registration of an application (including biometrics for the registration in Eurodac); obligation to lodge their application within 21 from registration; obligation to attend interviews; to remain in the Member State where they are supposed to be in accordance with the Asylum and Migration Management Regulation; to cooperate with the authorities at all stages of the procedure.

Failure to comply with these obligations entails severe consequences, especially the fact that in some cases the authorities will consider the application implicitly withdrawn.

The scope of what is to be considered a subsequent application is widened: under the Asylum Procedure Regulation, an application made in any Member State (and not only in the same Member State as is currently the case) after a decision on a previous application has become final is to be considered a subsequent application. If such an application does not present any new elements it should be rejected as inadmissible; if there are new elements, it should be dealt with under the accelerated procedure (or optionally, under the border procedure). Finally, there are exceptions from the right to remain during the administrative stage of the procedure and during the appeal for subsequent applications.

### **Guaranteeing people's rights**

The reform creates new safeguards for asylum seekers and vulnerable people, particularly minors and families with children. It introduces free legal counselling for all applicants in all asylum procedures, including the responsibility determination procedure, and it strengthens information rights.

In particular there are:

- New and strengthened information rights for applicants across all new legislative acts, so that applicants will understand their rights, obligations and the consequences of non-compliance with their obligations;
- The right to information is backed by a new right to free legal counselling for all asylum seekers in the administrative phase of the procedure. This applies to all procedures, including the border procedure and the procedure to determine Member State responsibility for an asylum application. At the appeal stage, all applicants will continue to have the right to be assisted and represented by a lawyer;
- Earlier identification of vulnerabilities and special procedural needs;
- New guarantees for minors: an obligation for a multidisciplinary approach (including psychologists, pediatricians, social workers etc.) to age assessment, to minimise the use of

intrusive medical examinations which can only be used if the first multidisciplinary assessment is inconclusive; new obligations across all the Pact instruments to ensure all unaccompanied minors have a representative appointed swiftly to take care of the child's interests, including their well-being (a temporary representative immediately, even if the minor does not apply for asylum, and a permanent one within 15 days from the making with a ratio of 1 representative for 30 unaccompanied minors); new provisions to prevent children going missing (fingerprinting as of 6 years of age). Access to education has to be ensured as soon as possible and within two months from lodging an application at the latest.

- More possibilities for applicants to be reunited with their families in other Member States: the family-related criteria of responsibility have been reinforced, family cases must be prioritised and there are new obligations regarding family tracing. For these provisions to be effective, the applicant will need to provide all information available in the Member State of first entry.
- Better safeguards regarding the respect for fundamental rights as Member States have an obligation to set up an independent mechanism for the monitoring of fundamental rights during initial screening and the asylum border procedure.

### **How does the Pact further reinforce the integration of applicants for international protection and their families into society, including access to education and to the labour market?**

The Pact **further deepens the integration** of applicants for international protection and their families, including access to the labour market. For example, a child's **right to education** is strengthened, with an emphasis on continuity, quality and integration as well as faster access to education. In this sense, access to education has to be ensured as soon as possible and within two months from lodging an application at the latest.

- **Access to healthcare** is reinforced for minors and a combination of measures will ensure that unaccompanied minors will receive the necessary assistance. Applicants for international protection will have the **right to work** in a Member State where they apply for international protection (6 months from the registration of the asylum application compared to 9 months today).

### **How does the new Reception Conditions Directive improve living conditions?**

The Reception Conditions Directive aims to establish **standard living conditions** in all Member States. It harmonises the existing rules and practices by Member States, which will be obliged to take into account EUAA indicators and guidance on reception.

Member States have a responsibility to ensure **sufficient reception capacity** and to ensure an **adequate standard of living** that protects physical and mental health and respects the Charter of Fundamental Rights.

Guarantees and safeguards are enhanced with regard to detention. For example, there should be no detention if it puts the physical and mental health of applicants at serious risk.

## **EU standards for refugee status qualification**

### **What are the criteria to qualify as a refugee under the Qualification Regulation?**

Within the meaning of the Qualification Regulation, a refugee is a third-country national who, owing to a well-founded fear of being persecuted 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, unwilling to avail themselves of the protection of that country. The definition also applies to a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned, is unable or, owing to such fear, unwilling to return to it.

### **What are the criteria to qualify for subsidiary protection status?**

A person eligible for 'subsidiary protection' is a third-country national or a stateless person who does not qualify as a refugee, but in respect of whom substantial grounds have been shown for believing that that person, if returned to their country of origin or, in the case of a stateless person, to their country of former habitual residence, would face a real risk of suffering serious harm and is unable or, owing to such risk, unwilling to avail themselves of the protection of that country.

### **What are the main novelties of the Qualification Regulation?**

The Qualification Regulation will have the following main added value compared to the current Directive:

1. It will foster **greater convergence** of asylum practices and decisions across Member States by obliging Member States:
  - to assess whether there is an internal protection alternative (safe part within the country of origin), and not grant refugee status in such a case;
  - to withdraw the international protection status when and where\* certain criminal acts have been committed or the person otherwise poses a security threat;
  - to take into account up-to-date EUAA guidance on the country concerned in this regard. Furthermore, the information materials and guidance from the EUAA should be taken into account during the whole decision-making process.
2. The new Regulation also aims to **clarify rights and obligations of beneficiaries**.
  - it is now required to provide harmonised information to the beneficiary and a clear obligation for Member States to issue residence permit no later than 90 days in a harmonised format;
  - for integration purposes access to certain social assistance specified in national law may be made conditional on the effective participation of the beneficiary of international protection in integration measures;
  - as in other parts of the Pact, the rights of unaccompanied minors are reinforced in terms of information provision in a child-friendly manner and in relation to requirements to the guardians;
  - on the existence of parallel national statuses, the co-legislators agreed that the Regulation does not apply to national humanitarian statuses granted by Member States to third country nationals and stateless persons who do not fall under the scope of this Regulation.
3. Finally, the Regulation aims at **discouraging irregular secondary movements of beneficiaries** by restarting the calculation of the eligible period of legal residence required in case of irregular movements or overstays.

### **What does it mean that Member States will need to check whether a person can be returned to certain parts of a country?**

If the State is not an actor of persecution, the Qualification Regulation (article 8) requires Member States to assess where there is an internal protection alternative for a person who would otherwise qualify for international protection. This means checking whether there is a part of the country of origin where the applicant could reasonably be expected to settle. Such an assessment has to follow strict conditions and take into account the general circumstances in the relevant part of the country, notably via up-to-date EUAA guidance, the personal circumstances of the applicant, and if he or she would be able to cater for his or her own basic needs. Some Member States already carry out such an assessment, which was a possibility granted under the Qualification Directive.

### **Preventing abuses**

#### **How will fast and efficient procedures be ensured?**

Fast and efficient procedures will be ensured through to the concrete timelines set out in the legislation. These will need to be respected by Member States when processing applications. For example, the border procedure will apply for a limited duration. It can only last 12 weeks (3 months). This period may be extended to 16 weeks if the applicant is relocated to another Member State. This gives sufficient time to properly assess cases that in principle are not supposed to be complex, ensuring that those with no legal right to stay can be returned in a faster and dignified manner.

#### • **Timelines**

The Asylum Procedure Regulation clarifies and streamlines the access to the procedure by establishing clear deadlines for each step. Such steps include the applicant expressing the wish to receive international protection (the making), the authorities registering the application (the registering), and the applicant lodging the application (the lodging). The Regulation thus clarifies what each of the three steps entails, what obligations the applicant and the authorities have, and what the deadlines for each of the steps are.

For example, currently the Asylum Procedure Directive does not set a time limit for the lodging. Instead, the lodging has to happen as soon as possible. This lack of a specific deadline has led to

many delays as the examination of an asylum application cannot start if it has not been lodged. The Asylum Procedure Regulation sets a time limit for the lodging of 21 days from the registering for the regular procedure.

Furthermore, currently the regular procedure should last 6 months. The Asylum Procedure Directive allows Member States under certain circumstances to extend the duration of the regular examination procedure by an additional 9 months. The Asylum Procedure Regulation, once in effect, will only allow an extension for a further 6 months. Thus, the regular procedure will last 6+6 months as opposed to 6+9 today.

- **Accelerated procedure and inadmissibility procedure**

Today the accelerated procedure is optional. Apart from the border procedure, the Asylum Procedure Regulation will make the accelerated procedure mandatory throughout the Union. Moreover, the Asylum Procedure Regulation sets a clear deadline of 3 months to conclude the accelerated procedure whereas the Asylum Procedure Directive does not foresee any deadline. Similarly, the Asylum Procedure Directive does not lay out deadlines for inadmissibility checks but now the Asylum Procedure Regulation establishes clear deadlines (from 10 days to 2 months, depending on the case).

- **Dealing with abusive or subsequent applications**

Today we are confronted with many cases in which persons abuse the system; for example, making last minute applications to delay the enforcement of a return decision, or applying multiple times (subsequent applications) without bringing new elements to substantiate the claim. These abusive claims and subsequent applications will be as a rule subject to accelerated procedures, be it at the border or within the territory depending on the particular case. In addition, if the person absconds and applies in another Member State, that Member State must only cover the applicant's basic needs and must treat the application as a subsequent application (if there is no possibility for sending the person back to the first Member State).

Furthermore, it becomes mandatory to reject an application as implicitly withdrawn as soon as any of the grounds foreseen in the relevant article apply (i.e., the person refuses to give their fingerprints or other biometric data). Currently, when a ground for implicit withdrawal arises, authorities have to discontinue/suspend the examination of the application for at least 9 months before taking a decision. If during this period the person requests the reopening of the case, the authorities have to comply. Moreover, the refusal to give biometrics is currently a ground for applying the accelerated procedure, not a ground for rejecting the application as implicitly withdrawn.

Finally, for most abusive claims and subsequent applications, the appeal will not have an automatic suspensive effect, which means that if the claim has been rejected and the person has not been allowed to remain by a Court, the authorities can enforce the return decision.

## **C. Effective system of solidarity and responsibility**

### **Permanent solidarity framework**

The Pact on Migration and Asylum strikes a balance between clear rules for all Member States to take up their share of responsibility for managing migration while ensuring none are left alone to cope with disproportionate pressures.

#### **How will the solidarity mechanism work in times of 'migratory pressure'?**

For the first time, the Union will have in place a permanent mandatory solidarity mechanism. No Member State will be left alone under pressure. At the same time, each Member State will contribute to the solidarity efforts in a flexible way, and they will be able to choose the type of solidarity they provide. The system will also include effective rules to detect and prevent secondary movements.

In order to decide who benefits from solidarity, the Commission assesses which Member States are under **migratory pressure or facing a significant migratory situation**.

**Migratory pressure** is mainly defined by a large number of arrivals (or risk thereof) or applications that will create disproportionate obligations (i.e., because that Member State will have the responsibility to examine a large number of applications) in a well-prepared system.

**Significant migratory situation** takes into consideration the cumulative effect of current and previous annual arrivals of non-EU nationals and stateless people. In a significant migratory situation, the determining factor is not the number of arrivals (they do not have to be of a large scale) but their cumulative impact, so that over time, because of this cumulation a Member State that is well prepared might be reaching the limits of its capacity. This could happen for example to

Member States that are facing secondary movements over time.

**Each year by 15 October, the Commission will adopt:** an annual report assessing the migratory situation; an Implementing Decision determining whether a particular Member State **is under migratory pressure or at risk of migratory pressure** during the upcoming year, or facing a significant migratory situation and proposal for a Council Implementing Act with the numbers of relocations and financial solidarity contributions required for the upcoming year. When doing its annual report, the Commission needs to take into account a series of qualitative and quantitative indicators. These include: the number of people disembarked following search and rescue operations; the number of applications for international protection; the number of people subject to the border procedure; the number of beneficiaries of temporary protection). Qualitative indicators include situations of instrumentalisation, scale and trends of unauthorised movements.

**In terms of the support available in each case:**

- 1) Member States under migratory pressure can receive support in form of relocations, financial contributions or alternative solidarity measures (i.e. staff and in-kind support). They can also receive a full or partial deduction from their solidarity pledge.
- 2) Member States facing a significant migratory situation can only benefit from a partial or full deduction of their pledged solidarity contributions.

Member States facing a '**significant migratory situation**' can request a partial or full deduction of their solidarity contributions. The procedure is similar to the Member States under pressure.

1. If the Member State was pre-identified by the Commission as facing a significant migratory situation, the Member State has to submit a request to the Commission which includes information.
2. If the Member State was not pre-identified, the information that it needs to submit is more detailed (as the Member State has to substantiate why it is facing a significant migratory situation). The Commission assesses the information and decides whether the Member State is facing a significant migratory situation.
3. Ultimately it is the Council that authorises the Member State to have a full or partial deduction following the decision by the Commission concluding that a given Member State faces a significant migratory situation.

### **How will the solidarity mechanism work in times of crisis compared to under the Asylum Migration Management Regulation?**

The Crisis and force majeure Regulation provides for enhanced solidarity compared to the framework set out in the AMMR for 'migratory pressure' or 'significant migratory situation':

- Firstly, the solidarity response is targeted to the Member State facing the crisis: under the AMMR, solidarity is part of an annual cycle, which includes the setting up of a solidarity pool for the potential use of a number of Member States that the Commission has identified as under pressure or that may be identified as under pressure during the year. This means that the solidarity pool has to be shared by all those Member States that, following the Council decision setting up the pool, express their intention to use it. In a crisis situation, specific solidarity pools are established for each Member State based on the request of the Member State concerned and an assessment of its specific needs.
- Secondly, a faster procedure will apply. Under the AMMR, the implementing act setting up the solidarity pool should be established by the end of the previous year. This means that between the assessment of the Commission that determines which Member States are under pressure and the needs for the following year (15 October each year) and the adoption of the implementing act setting up the solidarity pool there are 1.5-2 months. In a situation of crisis, the implementing act setting up the specific solidarity pool for the benefit of the Member State should be adopted within 3 weeks from when the Member States concerned are considered in a situation of crisis.
- Thirdly, all the relocation needs of the Member State have to be satisfied. To ensure this, the Crisis regulation provides for a series of measures:
  - It gives the Member State facing a situation of crisis priority to access the annual solidarity pool (under the AMMR annual cycle) if there are still relocation pledges available.
  - If there are no relocation pledges available or the specific solidarity pool established for the Member State in crisis does not contain sufficient relocation pledges to meet all the relocation needs, so called "responsibility offsets" (already existing in the AMMR) will

kick in. This means that the contributing Member State will take responsibility for applications for which the Member State facing a situation of crisis has been determined as responsible.

- Contributing Member States with cases to offset will be required, if needed, to take responsibility for examining applications for international protection beyond their fair share (as opposed to AMMR where contributing Member State may never contribute beyond their fair share). In that case, these Member States will be able to reduce the extra part from any future solidarity contributions.
- Therefore, in contrast to AMMR, in crisis situations, all relocation needs have to be covered by contributing Member States through the responsibility offsets, if these are not met through relocations.
- However, there are also some important principles from AMMR that also apply in a situation of crisis:
  - the solidarity measures that can be included in the pool are the same as in AMMR: they can take the form of relocations, financial contributions, alternative solidarity measures or a combination of the above (same as in the AMMR).
  - Member States have full discretion to choose among the solidarity measures, so in no circumstances can there be mandatory relocation.

## **Operational and financial support**

### **How do you calculate Member States' contributions?**

Every year, the Commission will propose a 'Solidarity Pool', setting up the needs for the year in absolute terms: total number for relocations and total number for financial contributions.

The Regulation foresees minimum thresholds for relocations and financial contributions that the Commission has to respect when calculating the needs for the year and in its annual proposal for the Council Implementing Act. These minimum thresholds are 30,000 relocations and EUR 600 million for financial contributions at Union level per year. However, the Commission may propose higher numbers. In calculating the needs, the Commission has to take into account the projected arrivals for the next year, also based on the previous year's needs. The calculation should also take into account that the Member States that will benefit from the pool are not obliged to implement their pledged solidarity contributions.

If, given all those factors, the Commission proposes higher numbers for relocation and financial contributions than the minimum thresholds in the Regulation, the Commission has to respect the ratio that the Regulation has set between relocations and financial contributions to ensure all solidarity measures have equal value. This ratio is 1 relocation/EUR 20,000.

Only in exceptional circumstances can the Commission propose numbers below the threshold. The Commission's proposal will also include an indication of what each contributing Member State's 'fair share' of solidarity measures would be, based on the GDP and population of each country.

This proposal is used as a basis for Member States to pledge their concrete contributions. These contributions can take the form of relocations, financial contributions or in-kind support. All Member States are obliged to contribute on the basis of their fair share, but they have full discretion to choose among the three types of solidarity measures or a combination of those. If the Member State opts for pledging in-kind assistance, this assistance will be monetised to be able to confirm compliance with the mandatory fair share.

The AMMR Regulation also foresees the possibility to earmark a part of the solidarity pool for Member States with external sea borders who are under pressure because of large numbers of arrivals due to disembarkations following search and rescue operations. All these elements will have to be reflected in the Commission proposal for a Council Implementing Act.

It is the Council, when adopting the Commission's proposal, that will ultimately define the total number for relocations and for financial contributions for the year, including the possible earmarking of the solidarity pool for Member States under pressure because of large arrivals in instances of search and rescue.

The total number for relocation and for financial contributions are used as reference numbers to calculate each Member State's contribution in accordance with the fair share. As they have full discretion to choose among the different types of solidarity, it is not expected to meet both numbers in a given year (i.e. there will not be 30,000 relocations and EUR 600 million of financial contributions). However, the total number for relocations set up in the Regulation and in the Council implementing act setting the Solidarity Pool has important legal consequences, as the Union is

obliged to meet a certain minimum of 'people solidarity', meaning either via relocation or via responsibility offsets every year. This minimum is 60% of the total number for relocations indicated in the Council decision setting up the annual Solidarity Pool or 30,000 relocations, whichever number is higher.

The Commission will take into account the lessons learnt from the Voluntary Solidarity Mechanism, where relocations took place on a voluntary basis from the countries of first entry to other Member States.

### **What is financial solidarity? How would it be channelled? Can it support activities in third countries?**

Among other measures, the member States can support other Member States under migratory pressure through financial contributions, which will be implemented through the Union budget. This means that financial contributions from contributing Member States will be made to the EU budget in the form of external assigned revenue under the Asylum, Migration and Integration Fund (AMIF) and the Border Management and Visa Policy Instrument (BMVI). These additional financial resources will subsequently be channelled by the Commission to the benefitting Member States through a modification of their respective programmes.

The benefitting Members can use financial contributions for relevant actions in their territory, in consistency with the scope of the Asylum Migration Management Regulation and of the AMIF or BMVI Regulation. In the case of AMIF, financial contributions can also support actions in third countries, under specific safeguards and only within the scope of the AMIF. This means that it is not possible to fund border-related activities in a third country under financial solidarity. Actions in third countries have to be in full respect of fundamental rights and can help reinforce the protection system of those third countries. A benefitting Member State can decide to fund, for example, the enhancement of capacities of third countries to improve the asylum and reception systems for those in need of protection, including children. A benefitting Member State can also fund activities linked to the promotion of mobility partnerships or voluntary return and reintegration programmes from a third country.

## **Clearer rules on responsibility for asylum applications**

### **What is a 'responsibility offset'? When can these be used?**

If a Member State is under pressure, an important measure to alleviate this pressure is reducing the number of asylum applications that the Member State concerned is required to examine (i.e. the Member State under pressure is alleviated of the responsibility for a given number of asylum applicants). The AMMR foresees two possibilities for reducing the responsibility of the Member State under pressure for a given number of asylum applicants:

1. **Relocation of applicants for international protection to other Member States.** In this case, an applicant who is the responsibility of the Member State under pressure is transferred to another Member State who will then become responsible to examine the asylum application.
2. Reducing the number of applicants that should be sent back to the Member State under pressure using '**responsibility offsets**'. This measure covers those whose asylum applications should have been examined by the Member State under pressure but who moved to another Member State in an unauthorised\* way. Under the responsibility rules, these applicants should be sent back to the Member State under pressure. However, the Member State where the applicant is physically present takes the responsibility to examine the asylum application instead of transferring the applicant back to the Member State under pressure. For example: Country A has been asked to relocate 20 people from Country B but can choose instead to take over responsibility for 20 people already present in Country A but for whom Country B is normally responsible and whom country A could normally return to Country B. This will be counted as a form of solidarity.

As the objective of both measures is to reduce the number of applicants whose asylum applications should be the responsibility of the Member State under pressure, these two measures - relocation and responsibility offsets- are called 'people solidarity'.

While there is no mandatory relocation, 'responsibility offsets' may become mandatory in certain cases, including if relocation pledges are insufficient to cover a minimum of relocation needs (30,000 or 60% of the relocation needs identified by the Council in its decision setting up the annual solidarity pool, whichever number is higher). In this way, Member States under pressure will have the guarantee of receiving 'people solidarity', i.e. being alleviated of the responsibility for a given number of asylum applicants. However, as responsibility offsets can only apply to applicants that are



already on the territory of the Member State that is applying the offset, if a Member State does not have applicants on its territory to offset, that Member State cannot be required to carry out offsets. Furthermore, no Member State is obliged to offset applicants beyond their fair share. Both relocation and responsibility offsets will be overseen by a Solidarity Coordinator in the Commission.

### **How will the solidarity rules be enforced?**

The reform includes a series of **safeguards as well as checks and balances** that create **incentives for compliance and should facilitate the implementation** of the solidarity mechanism.

For instance:

- Only Member States with well-prepared systems can be eligible for solidarity or for deductions in their solidarity obligations. A well-prepared system is a main requirement under the definition of 'migratory pressure' (which is a pre-condition to receive solidarity) and 'significant migratory situation' (which allows Member State to benefit from deductions in their solidarity contributions).
- If a Member State does not pledge or does not comply with its solidarity obligations, the benefitting Member State can force mandatory offsets and the Commission can recover the financial contributions (as appropriate).
- If a Member State is not complying with its responsibility obligations, the other Member States are not obliged to comply with the solidarity obligations in relation to that Member State.
- If there is not a sufficient amount of relocation pledges to meet the minimum of 'people solidarity' that has to be ensured by the Union, responsibility offsets become mandatory, acting as a backstop to ensure the minimum of people solidarity at EU level (meaning, that the Member States under pressure will be alleviated by not taking responsibility for a fixed number of people annually).
- The High-Level Solidarity Forum, composed of Member State Ministers, can be convened at any time where there is a problem, including a need to conduct a new pledging exercise, while the day-to-day operationalisation of solidarity will be ensured through the Technical-Level Solidarity Forum.
- Ultimately, if Member States do not comply with the rules within two years, the Commission can make use of its powers under the Treaty (infringements).

### **What are the definitions of 'migratory pressure' and 'significant migratory situation'?**

**'Migratory pressure'** means a situation brought about by **arrivals** by land, sea or air or **applications** of third-country nationals or stateless persons, that are **of such a scale that they create disproportionate obligations** on a Member State, taking into account the overall situation in the Union, **even on a well-prepared** asylum, reception and migration **system** and require immediate action, in particular solidarity contributions; and taking into account the specificities of the geographical location of a Member State. 'Migratory pressure' covers situations of large number of arrivals of third-country nationals or stateless persons or a risk of such arrivals, including where such arrivals stem from recurring disembarkations following search and rescue operations, or from unauthorised movements of third-country nationals or stateless persons between the Member States.

**'Significant migratory situation'** means a situation where the **cumulative effect of current and previous annual arrivals** of third-country nationals or stateless persons leads a well-prepared asylum, reception and migration system to **reach the limits of its capacity**.

### **What are differences between being under migratory pressure or facing a significant migratory situation?**

Migratory pressure is mainly defined by a large number of arrivals (or risk thereof) or applications that will create disproportionate obligations (i.e., because that Member State will have the responsibility to examine a large number of applications) in a well-prepared system.

In a 'significant migratory situation', the determining factor is not the number of arrivals (they do not have to be of a large scale) but their cumulative impact, so that over time, because of this cumulation a Member State that is well prepared might be reaching the limits of its capacity. This could happen for example to Member States that are facing secondary movements over time.

Being under migratory pressure enables a Member State to access solidarity and/or receive a full or partial deduction from its solidarity pledge, while facing a significant migratory situation only enables a Member State to receive a full or partial deduction from its solidarity pledge.

### **What elements are taking into account to determine whether a Member State is facing one or the other situation?**

When the Commission assesses whether a Member State is under migratory pressure or facing a significant migratory situation, it needs to take into account a series of quantitative indicators. These include: the number of people disembarked following search and rescue operations; the number of applications for international protection; the number of people subject to the border procedure; the number of beneficiaries of temporary protection); as well as more qualitative indicators such as situations of instrumentalisation, scale and trends of unauthorised movements.

### **Are there new obligations for applicants under the Pact?**

There will be **clearer rules on responsibility for assessing the asylum applications**. The new rules enhance the responsibility criteria and the rules for determining the Member State responsible for assessing an asylum application:

- applying for international protection in the Member State of first entry (unless the person is not in possession of a valid visa or residence permit or authorised to travel visa-free in the Union), where the applicant is obliged to be during the determination of the Member State responsible;
- full cooperation with the authorities for identification of the Member State responsible, including obligation to cooperate for the collection of biometric data and to present documents relevant for determining his/her identity;
- compliance with the transfer decision and to cooperate fully for its implementation.

Non-compliance with these obligations has clear legal consequences for the applicant, such as:

- the full set of the material reception conditions are provided only in the Member State where the applicant is supposed to be under the AMMR rules, if the applicant is in another Member State – only the basic needs are covered;
- Member State authorities determining the responsibility are obliged to continue (the determination) even if the applicant is not present at their territory, i.e. the applicant that violates the requirement to be present in that Member State will not be entitled to a personal interview and to give/clarify the information on his/her case;
- non-compliance with the transfer decision, as well as absconding, after the issuance of a transfer decision gives rise to an extended timeline for implementing the transfer (from 18 months under the old rules to 3 years under the new rules).

## **Preventing secondary movements**

### **How will abuses – absconding, secondary movements, be prevented?**

**The obligations for applicants have been made clearer and stricter.**

When an applicant moves in an unauthorised way from one Member State to another, the AMMR foresees the possibility to transfer the person from the Member State where the person is physically present to the Member State where the person is required to be legally present. This transfer is called a 'take-back procedure'.

From a lengthy and complicated procedure based on requests between Member States and exchange of proofs and evidence, the take-back procedure will become a simple notification procedure. This means that the Member State where the person is present without any (legal) reason can simply notify the Member State responsible and proceed swiftly with the transfer decision.

There will be no shift of responsibility if the take-back notification is not sent on time (by the Member State on whose territory the person is present). This means that they can notify the person's presence and consequently organise their transfer at any time.

### **How can the take-charge procedure reduce secondary movements?**

When a person arrives in the Union seeking international protection, the Member State of first arrival will need to determine which Member State is responsible. One of the most difficult criteria to apply is the family criterion (i.e. when an applicant has a family member in another Member State). People applying as they arrive in the Union with family members in other Member States often do not wait for the procedure to be concluded in the Member State of first entry, because it is a lengthy and bureaucratic procedure. Instead, they go directly to the Member State where their family member is present.

The AMMR requires that Member States prioritise family cases and take more resolute measures to support family tracing. Deadlines for the replies between the Member States will be shorter and Member States will be obliged to avoid requesting unnecessary, cumbersome proofs (like a DNA test or original marriage or births certificates) where circumstantial evidence is coherent, verifiable and

sufficiently detailed.

The EUAA will develop a template to be filled in by the applicant as soon as possible to facilitate the faster and more efficient identification of family cases and guidelines to support the identification and tracing of family members. These measures, together with the broadening of the definition of family member to include families in transit, and other improvements (i.e. new responsibility criteria for diplomas), should make the system fairer and more efficient and in turn reduce some of the pull factors that make people move in an unauthorised manner.

## **D. Embedding migration in international partnerships**

### **Preventing irregular departures**

#### **How does the EU cooperate with third countries on preventing irregular departures?**

The EU is establishing tailor-made **comprehensive partnerships** with key partner countries focusing on several areas of cooperation, such as economy, trade, green energy and digital as well as migration management and security.

These are further complemented by Action Plans to address migration challenges in a whole-of-route approach.

In addition, other instruments such as **Anti-Smuggling Operational Partnerships** with key partner countries (i.e., Western Balkans, Morocco and Tunisia) are being implemented with measures to increase cooperation and respond to challenges related to migrant smuggling and trafficking in human beings and irregular migration towards Europe from transit countries. These measures are also supported by initiatives and actions mitigating irregular departures such as increased legal pathways towards Europe with the implementation of **Talent Partnerships**, strengthened protection and asylum mechanisms in partner countries, providing return and reintegration opportunities from transit countries, and addressing the root causes of migration.

### **Fighting migrant smuggling**

#### **As part of the Pact, how will the EU strengthen cooperation with partner countries to counter migrant smuggling?**

The EU launched **the Global Alliance to Counter Migrant Smuggling** in November 2023 to strengthen cooperation with partner countries on prevention, response, protection and alternatives to irregular migration. This is an important step in fighting migrant smuggling jointly with our partners. It takes a network to fight a network.

In addition, there are many different projects on-going to fight migrant smuggling. The Common Operational Partnership projects bring together law enforcement and judicial authorities to develop capacities to tackle the criminal networks and the projects on information and awareness raising inform about the risk of irregular migration and offer information on legal migration alternatives.

The Commission is proposing to upgrade its legislative framework with a Directive laying down minimum rules to prevent and counter facilitation of unauthorised entry, transit and stay in the Union. This was presented during the November 2023 **International Conference on a Global Alliance to Counter Migrant Smuggling**. The Directive has the following five objectives:

1. Effectively prosecute organised criminal networks;
2. Harmonised penalties reflecting the seriousness of the offence;
3. Improving jurisdictional reach;
4. Reinforcing Member States' resourcing and capacities;
5. Improving data collection and reporting.

As part of the new counter-smuggling legislation, the proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation, pursues the following specific objectives:

1. Strengthening inter-agency cooperation on migrant smuggling and trafficking in human beings;
2. Strengthening steer and coordination on countering migrant smuggling and trafficking in human

- beings at EU level;
3. Improving information sharing on migrant smuggling and trafficking in human beings;
  4. Reinforcing Member States' resources to prevent and combat migrant smuggling and trafficking in human beings;
  5. Reinforcing Europol's support to the prevention and combatting of migrant smuggling and trafficking in human beings through operational task forces and Europol deployments for operational support.

To fulfil these objectives, the Commission has also proposed to increase the financial and human resources of Europol to respond to operational needs and address identified gaps.

## Cooperation on readmission

### How will the Pact deepen cooperation with partner countries? What does the new comprehensive partnership approach entail?

Migration is a global reality and an integral part of the EU's deepening relationships with partners worldwide. The Commission has consistently engaged with international partners in a Team Europe approach to address the root causes of migration, fight migrant smuggling, and promote legal pathways.

Developing legal migration must also go hand in hand with [strengthened cooperation on readmission](#). As part of a functioning asylum and migration system, those who have no legal right to stay in Europe must be returned. The EU Return Coordinator is working closely on this with Member States in the High-Level Network for Returns.

**A new paradigm based on comprehensive partnerships** is being developed with many of the countries of origin and transit to the EU, including recent initiatives with Tunisia, Mauritania and Egypt. Under this new approach, migration is embedded into the close cooperation with our partners countries alongside other key areas such economy and trade, investments in green energy, security and people to people relations. The EU and its Member States are the world's leading donor to support refugees, and the largest provider of development assistance. The comprehensive partnerships are complemented by the **"whole-of-the-route approach"** covering all aspects, from dealing with the root causes of irregular migration to cooperation on other aspects of migration and border management and border (Action Plans on Central Mediterranean, Western Balkans, Western Mediterranean and the Atlantic, Eastern Mediterranean routes).

## Promoting legal pathways

### How will the Pact improve legal pathways for people in need of international protection?

The Pact further enhances **safe and legal pathways** to the EU for people in need of protection, through a Union Resettlement and Humanitarian Admission Framework. For the first time, there will be a stable and predictable legal framework. This will allow the EU to speak with one voice and help increase the Union's contribution to international resettlement.

### What is the Union Resettlement and Humanitarian Admission Framework?

The Union Resettlement and Humanitarian Admission Framework (Union Framework) will provide a unified procedure for resettlement and humanitarian admission operations, reducing divergences among current national practices and improving efficiency.

It will be based on a two-year Union plan. The Union Plan will determine the total number of persons in need of protection to be admitted to the EU and include indications on the contribution by each Member State, as well as on non-EU countries from which admission is to occur.

Member States' voluntary efforts will be supported by appropriate funding from the EU budget, considering budget availability.

A smooth transition from the current ad-hoc scheme to the first resettlement and humanitarian admission under the Union Framework will be ensured. The Union Framework will help put EU resettlement and humanitarian admission efforts on a more permanent footing. The 2020 Commission Recommendation on legal pathways to protection in the EU will continue to set the scene for promoting further innovative models, like complementary pathways and community sponsorship.

### How will the Pact improve labour pathways to the EU?

The Pact sets out three main ways of improving legal pathways to the EU.

- First, the **Skills and Talent Mobility Package** put forward by the Commission in November 2023 includes a legislative proposal establishing the EU **Talent Pool**, an EU-wide platform. The package also includes a Recommendation on the recognition of qualifications of third country nationals. The Recommendation seeks to address the role of recognition of skills and qualifications as a factor that impacts attractiveness for third country nationals, and supports their successful integration, in Member State labour markets. It aims to reduce administrative burden and costs for recognition for both applicants and employers, which can deter or block successful recruitment from third countries.
- Secondly, the revised **Blue Card Directive will help attract and retain highly skilled workers** to the EU, through more flexible admission conditions, enhanced rights and the possibility to move and work more easily between EU Member States.
- Finally, in December 2023 a political agreement was reached on a streamlined procedure for **the single permit** for combined work and residence of non-EU nationals in the EU. It will streamline the procedure to apply for a permit to reside in the EU for the purpose of work, giving a boost to international recruitment of talent. It also introduces new measures aimed at strengthening the protection of third-country workers against exploitation.

### What is the EU **Talent Pool**?

- The EU Talent Pool will be the first **EU-wide platform** aimed at making the EU more attractive for non-EU nationals looking for job opportunities in the EU and having the skills required to work in EU wide shortage occupations at all skills levels. It will help EU employers find the talent they need and ensure decent working conditions.

### How does the new **Single Permit** work?

- The Single Permit Regulation will be a single permit that **combines work and residence** of non-EU nationals in the EU.
- It will **streamline the procedure** to apply for a permit to reside in the EU for the purpose of work, giving a **boost to international recruitment** of talent. It also introduces new measures aiming at strengthening the protection of non-EU workers against exploitation.

### What changes with the Pact as regards search and rescue?

The responsibilities of Member States for search and rescue (SAR) operations fall within their national competence under international law and this remains unchanged. The Pact introduces a new legal framework for **what happens after people are saved** in search and rescue operations and enter the territory of a Member State.

There are 3 main pillars introduced by the Pact:

#### 1. **New specific rules on responsibility and solidarity for SAR cases:**

- **Responsibility:** Defining which Member State is responsible for people disembarked after search and rescue operations and who apply for asylum. The new rules recognise that disembarkation following a search and rescue event is not the same as an irregular entry. For this reason, a Member State that rescued a person at sea following a SAR operation remains responsible for this person for **12 months**, whereas in the case of irregular entry, the Member State would remain responsible for 20 months. To ensure the proper application of these rules, the new Eurodac Regulation creates a specific Eurodac category for SAR arrivals.
- **Solidarity:** AMMR acknowledges that search and rescue is a structural factor of pressure and therefore, Member States confronted with large number of sea arrivals through SAR operations might be among the Member States benefitting from solidarity measures. The reform sets out **a permanent mandatory solidarity mechanism** with the possibility of earmarking part of the annual solidarity pool (composed of the solidarity contributions by all Member States) for Member States under pressure because of SAR. This means that an annual number of relocations and financial contributions are 'reserved' for Member States facing large number of sea arrivals because of SAR operations to ensure predictability and continuity of support. This permanent mechanism means no more ad-hoc solutions based on voluntary contributions. Member States must in addition take into account the vulnerabilities of those arriving from disembarkations following search and rescue operations.

**2. Improving information sharing and cooperation:** The Commission created in 2021 the first SAR Contact Group to reinforce cooperation and support the exchange of information between Member States and Schengen Associated States. **The SAR Contact Group was relaunched in 2023** and meets on regular basis. The Contact Group gathers knowledge on rules and practices developed and applied by Member States with the objective to enhance a common understanding of

SAR and contribute to the development of common practices in this field, in compliance with the applicable international and European legal framework. The Group has also piloted near real-time as well as post-factum **analytical information sharing**, and a study looking at the technical safety measures of all vessels in the context of SAR is being carried out.

**3. Guidance and common rules:** The Commission issued a **Recommendation on enhanced cooperation on Search and Rescue** in 2020. In addition, the Commission also proposed to revise the **Facilitation Directive**, to further clarify that humanitarian activity carried out in the form of search and rescue in compliance with international law must not be criminalised. This proposal is pending negotiations by the co-legislators.

*\*Updated on 17/05 at 16:00*

[1] The political agreement was reached in December 2023:

[2] The political agreement was reached in May 2021. The revised Directive entered into force on 27 November 2021. [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration/work/eu-blue-card\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration/work/eu-blue-card_en)

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