

## How the political agreement on the EU Pact on Migration and Asylum fails the solidarity and human rights test

A political agreement was found on the EU Pact on Migration and Asylum on 19 December after intense weeks of trilogues. The worrying outcome weakens considerably the European asylum system instead of addressing its shortcomings. If adopted, the 5 regulations of the Pact will in summary, create more walls, lower protection and fundamental rights standards and increase detention and cases of racial profiling, [as civil society underlined in an eleventh-hour open letter ahead of the final negotiations](#). The main lines agreed on by policy-makers are the following:

Upon irregular entry or disembarkation following a search-and-rescue operation, people would be taken through a **screening procedure** lasting up to seven days. During this period, people including families would be, *de facto*, detained by border authorities – but not *de jure* due to the legal fiction that they are not actually present on the territory of the Member State, effectively curbing their access to rights and legal procedures. Despite some meager wins by the Parliament (such as access to emergency health care, a fundamental rights monitoring mechanism with a limited mandate), a very worrying concession is to keep Article 5. Under its clauses, people *already* present on EU territory could be arrested and detained to undergo the same kind of screening on suspicion of having entered the EU irregularly – this constitutes nothing short of [a blank check for racial profiling, as previously underlined by civil society](#).

The screening would channel people towards either standard or ‘accelerated’ **border procedures combining asylum and return**. They would be mandatory for all Member States and for all nationalities whose asylum applications in that country have a 20% or lower recognition rate, and would be applied also to families with children. This would [effectively create differential treatment, channeling specific nationalities that are often already victims of racism and xenophobia, into a second-rate procedure with no legal representation. A process that would likely only reinforce existing discrimination](#). If the asylum claim is rejected, Member States would be able to directly return people to third countries people have a "connection" to, assessed to be safe on a bilateral basis only This would likely translate into expeditive returns to either well-documented unsafe countries (i.e. Libya) or to countries that people have no meaningful connection to with essentially no possibilities to appeal.

The failing rules in **allocating responsibility for asylum-seekers between Member States**, governed so far by the [Dublin regulation III](#), would remain substantially intact. The resulting situation will very far from any ideal of a fair distribution. While “solidarity” would be mandatory, States would have the possibility to choose between three forms: relocations, funding for border Member States, and funding for third countries. In other words, States would be able to choose to make cash payments instead of relocating people - funds much more likely to go to border management or its externalisation, rather than to receiving or improving asylum systems in third countries. The new criteria for allocation of responsibility would include having a diploma in a Dublin State but siblings would not be covered in the understanding of family, therefore preventing families from being reunited. Children as young

as six would have their biometric data collected, in direct contradiction to GDPR provisions and in a move to [further criminalise crossing borders through the EURODAC reform](#).

It is worth noting that in situations of crisis, however, a Member State in crisis would not have to take charge of or take back asylum applicants who would otherwise fall under its responsibility.

Even more distressing is that the Pact offers **three different regimes to derogate from EU asylum law** in terms of access to legal advisers, reception conditions, scope and timeline of detention. One of them, the infamous “situations of instrumentalisation of migrants”, falls outside of the negotiating mandate of the Parliament as it was not foreseen in the original proposal for a Crisis and Force Majeure regulation, but pushed by the Council after the motion for an “Instrumentalisation Regulation” [failed to reach a majority](#). Under situations of instrumentalisation, everyone entering the territory irregularly could be subject to a border procedure. On top of this, the scope of instrumentalisation would include ‘hostile non-State actors’ as potential perpetrators. This may lead to criminalising the humanitarian action of CSOs, if Member States judge them to be an attempt at destabilising them.

The only positive element is the possibility to trigger the mandatory ‘responsibility offsets’ in situations of crises if the standard forms of solidarity are not proving enough to solve the ‘crisis’.

A number of individuals from all negotiating parties shared the view that the uncertainty around the future composition of EU institutions after the 2024 elections, and the fact that the next four EU presidencies will be held by countries known for being hardliners on migration, made urgent an agreement on the EU Pact, apparently at all costs. This argument was used as a justification to push the Parliament, whose initial position had mitigated some of the worst elements of the Pact, to compromise at absurd levels. The result is basically either a return to the Commission position or an endorsement of the Council’s general approach, with disastrous consequences for fundamental rights. In particular, the Parliament made the shocking move to concede to the Council’s proposal to include “instrumentalisation” in one of the proposals, bypassing its negotiating mandate.

At odds with the proposed asylum reforms, the response to displacement from the war in Ukraine has shown compassion and the will to protect people while giving them autonomy. **A coordinated European response to swiftly grant protection status of reasonable initial duration with immediate access to rights and freedom of movement, are a testimony of what is possible to achieve and should inspire future reforms of the European asylum systems.** Proceeding on the path the Pact is headed on would formalise an unfair, two-tiered system to granting protection.

The agreement remains a political one and has yet to be formalised into a technical text, which needs to be adopted by co-legislators. **SOLIDAR rejects the political agreement and urges the Belgian Presidency to play an active role in pushing the technical negotiations away from the use of detention of families, accelerated and discriminatory procedures, derogations from safeguards, unfair sharing of responsibility for applicants and racial profiling.**

In the medium to long-term, SOLIDAR calls for [a solidarity- and human rights- based approach to migration and asylum in the EU](#), notably through:

- **Investing in asylum systems in Europe guaranteeing all people access to fair procedures at all times, moving away from practices of detention and improving reception;**
- **Creating a meaningful solidarity system with a fair distribution of asylum-seekers across Member States, focusing on relocation.**
- **Adopting and expanding safe, regular and structural pathways to enter and reside in Europe, for all purposes.**
- **Supporting the long-term inclusion and participation of all migrants**
- **Promoting a positive narrative on migration and interculturality.**

**Signatories:**

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