

Briefing paper to Oireachtas Justice Committee members on the EU Migration and Asylum Pact

19 April 2024

Introduction

Dear Committee members,

This is a short briefing paper that may be helpful in your consideration of the EU Asylum and Migration Pact.

We believe the reforms contained within the EU Asylum and Migration Pact reflect an effort to limit access to protection for refugees in Europe. They will result in less safeguards, increased detention and destitution among people seeking protection. Below we highlight some of our main concerns, particularly around the border procedure, and include references to more information on the consequences of the Pact across the EU.

More than 160 organisations across Europe, including global human rights organisations such as Amnesty and Human Rights Watch, have raised concerns about the Pact's contents.

Of most concern is that people who arrive without documentation and those that have had to cross a border illegally will be detained. In our experience, this will include applicants from countries with high rates of refugee declarations, including Afghanistan and Somalia, who often have no alternative other than to travel without passports or use substitute documents.

People who arrive from countries with a recognition rate of 20% or less will also be subject to detention. They will also be channeled into an accelerated border procedure. This risks overlooking those who are most vulnerable and in need of protection, and whose cases often require legal advice and careful consideration. We note that, in the context of an Irish average refugee recognition rate of approximately 35%, a recognition rate of 20% reflects a substantial need for protection.

We are concerned that limited vulnerability assessments will not be sufficient to identify particularly vulnerable people. This, coupled with provision for detention, could have significant consequences for the rights and wellbeing of people seeking protection. The Irish government recently suspended the Vulnerability Assessment procedure, which the Reception Conditions Directive requires be carried out on all international protection applicants within three months of an application for asylum. We have serious doubts that applicants will receive adequate vulnerability assessments before being detained, subjected to accelerated procedures, and returned/deported to country where they face persecution or harm.

Underlying our concerns is the fact that, despite an increase in applications over the last four years (and the preceding decline in applications between 2016 and 2019), the EU's share of the world's refugee population has decreased from 70% in 1993 to under 20% since 2018. According to UNHCR, about 74% of the world's refugees are hosted by low-income and middle-income countries, i.e. outside the EU. UNHCR estimate that 69% of refugees and other people in need of international protection lived in countries neighbouring their countries of origin.

Also, that people need protection, More people need and are receiving protection than ever before but in the worst political and legal climate and framework than ever before.

Over the last year at EU level, the recognition rate, which reflects the percentage of asylum applications that receive decisions granting refugee status and subsidiary protection, fluctuated at

around 45%.

In Ireland, over the last three years (2021, 2022, 2023) 3 in 10 applications have been successful at first instance, add the permission to remain category and it is 5 in 10. 3.5 in 10 appeals are successful. Given the very rigorous consideration of protection applications at first instance and appeal, this shows, contrary to what circulates online and on some websites, people have real protection needs.

While the Pact began with good intentions, it has been gradually eroded by various member states' hardening positions. We agree that change is needed. But not at any price.

European Council on Refugees and Exiles summary:

The Irish Refugee Council are a member of ECRE. This is the summary of ECRE's critique of the pact:

- Reduction in protection standards
- Model based on containment at the borders in sub-standard asylum procedures
- Extensive use of detention
- Disproportionate focus on deportation/return
- Volume and complexity of proposals (approximately 1,300 pages in total)
- Use of derogations / De-harmonization
- Do not tackle the key problems – responsibility sharing rules /Dublin + compliance
- Externalisation focus
- Punitive approach – reception withdrawal
- Compliance problems over-looked

The Asylum Procedure Regulation:

- People who apply for asylum will be channelled into either normal or “accelerated procedures,” also referred to as the border procedure.
- People subject the border procedure would not be considered to have legally entered the EU.
- The border procedure will often take place in detention. The ‘legal fiction of non-entry’ applies, even when the procedure takes place away from the border, elsewhere within the state, which is allowed.
- Those who are processed under the border procedure will not be authorised to enter Ireland and will be accommodated at designated locations, this can include detention.
- The border procedure will have shorter timeframes for making decisions, fewer safeguards, and limited access to legal advice.
- People who come from a country where the refugee recognition rate is less than 20% (across the EU) will be automatically referred to the border procedure. This would create a two-tier asylum system based on nationality. These risks overlooking a person's individual reasons for applying. We also note that a recognition rate of 20% is indicative of a high rate of protection need, given that Ireland's average recognition for 2022 and 2023 was approximately 35%.

- Applicants who receive negative decision will be fast-tracked for deportation. An appeal against a negative decision will not pause the deportation/return procedure, meaning that a person may receive a positive appeal decision after being deported to a country where they face risk. Across the EU, over one third of appeals result in the award of a protection status.
- Applicants can apply to suspend a deportation pending the appeal decision but, significantly, with a short deadline and requiring a separate legal challenge.
- This will limit access to protection in Europe and will result in people being returned to countries where they face persecution and harm. This would be a violation of the principle of non-refoulement.
- In cases where people cannot be returned in the time provided, the border procedure is to be continued, providing for detention pending deportation of 3-6 months - in extreme cases even 12 months.
- Families with children will not be exempted from the border procedure, with only limited additional safeguards.
- Unaccompanied minors will be channelled to the “regular asylum procedure” and will have the right to enter the territory, unless the minor is considered to be a danger to national security or public order.
- We would be greatly concerned that unaccompanied minors, who may be incorrectly processed as adults, could be subject to the border procedure. In the past year, failure to correctly identify unaccompanied minors has resulted in minors sleeping rough in Dublin.
- The border procedure does not allow people to apply for other forms of protection, such as humanitarian permission to remain. This could particularly impact survivors of human trafficking, especially as they will have limited access to legal representation.

References and further info:

- <https://ecre.org/editorial-all-pact-ed-up-and-ready-to-go-eu-asylum-law-reforms/>
- <https://www.rescue.org/eu/article/what-eu-pact-migration-and-asylum>
- <https://emn.ie/cabinet-greenlights-eu-migration-and-asylum-pact-opt-in-approval-process/>

The Eurodac Regulation:

- Increased provision for surveillance and data-sharing will increase the criminalisation, securitisation and racialisation of our asylum procedures.
- The conflation of internal security and irregular migration is damaging to people seeking protection and threatens the credibility of our asylum process.
- For more, see: <https://picum.org/blog/the-eu-migration-pact-a-dangerous-regime-of-migrant-surveillance/>

The Asylum and Migration Management Regulation:

- The “Solidarity Mechanism” will not reduce the disproportionate responsibility on border states.
- States can, and will, choose to provide funding to border states rather than accepting relocation of asylum applications from border countries.
- ‘Solidarity funds’ can be used to fund detention centres, pushback activities, and unethical migration control activities in countries outside of the EU.
- The ‘solidarity mechanism’ will not disincentivise pushbacks or the ignoring of boats in distress.
- For more information, see: <https://hias.org/news/eu-pact-migration-and-asylum-explained/>

The Crisis and Force Majeure Regulation:

- “Instrumentalisation” and derogations will allow for further pushback at the EU’s borders.
- The basic rights, including the right to seek asylum, and the wellbeing of people fleeing persecution will not be protected.
- For more, read this joint NGO statement, available at:
<https://www.rescue.org/eu/statement/ngos-warn-eu-instrumentalisation-regulation-ceas>

It is our opinion that the Irish government should not opt in to the EU Pact on Migration and Asylum. We believe it will result in deterioration of standards and an asylum procedure which does not respect basic rights or contain safeguards for vulnerable applicants.

If the regulations are approved, as a charity with the protection of refugees in our mission, we will request that civil society be involved in the development of the national implementation plan. We will also be closely scrutinising draft legislation, relentlessly calling for the highest standards and protections in line with the fundamental right to claim asylum and existing international protection and human rights law and monitoring implementation.