



## Resolution 2416 (2022)<sup>1</sup>

# European Union Pact on Migration and Asylum: a human rights perspective

Parliamentary Assembly

1. On 23 September 2020, the European Commission issued a Communication on a New Pact on Migration and Asylum, introducing a number of proposals aimed at improving asylum and migration management procedures in Europe, in particular an integrated procedure at external borders (pre-entry screening leading to an asylum procedure and/or a swift return decision), a common European Union return system to improve expulsion procedures and a new obligatory solidarity mechanism. While the pact's proposals are primarily addressed to the European Union and its 27 member States, its conceptualisation of regional migration governance is relevant to the wider membership of the Council of Europe.
2. The recent political crisis in Afghanistan and a State-sponsored increase in migration pressure at the European Union's border with Belarus have shown that an efficient mechanism to address migration and asylum challenges in Europe, which is fully consistent with human rights obligations, is urgently needed.
3. The Parliamentary Assembly welcomes the European Union's commitment to fully integrating European human rights standards into all its policies on migration and asylum and supports its efforts to put forward a "more human and more effective migration and asylum system". It supports the holistic approach to the management of irregular migration proposed in the EU pact and the introduction of a crisis reaction mechanism strengthening solidarity provisions, which is extremely important in the current situation.
4. The Assembly reiterates the obligation of EU member States to implement existing EU migration- and asylum-related legislation, which remains applicable regardless of reform proposals, and encourages the European Union institutions to reach an agreement on the main legislative proposals in the EU pact, while ensuring its compliance with the Council of Europe standards as they pertain to the pact.
5. It also believes that the new asylum and migration management system will contribute to minimising the impact of the Covid-19 pandemic in Europe by reducing the length of procedures and providing States with emergency funding to address Covid-19 in reception facilities and public hospitals. The EU Migration Preparedness and Crisis Blueprint could be an effective tool for information exchange between member States on the responses to the pandemic in Europe.
6. The Assembly strongly supports the proposals to facilitate more labour migration across different skill levels and to protect migrant labourers from exploitation. It encourages the European Union to increase legal pathways to entry, in particular for the EU's neighbouring countries.
7. At the same time, the Assembly notes that the proposals included in the pact are very complex and do not contribute to a clear understanding of the proposed management of the EU's external borders. This raises concerns that the proposed accelerated asylum procedures will reduce the quality and fairness of procedures and thus lead to higher rejection rates and the inability of asylum seekers and refugees to access safeguards such as adequate legal assistance and a fair and fast asylum procedure.

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1. *Assembly debate* on 24 January 2022 (2nd sitting) (see [Doc. 15438](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Oleksii Goncharenko). *Text adopted by the Assembly* on 24 January 2022 (2nd sitting).



8. The Assembly considers that before the adoption of the pact's proposals, a comprehensive human rights assessment of the compatibility of each measure with the case law of the European Court of Human Rights needs to be undertaken by the European Commission.

9. The Assembly believes that special procedures for the protection of persons in vulnerable situations must address the needs of these persons and incorporate the heightened duty of support that arises from human rights obligations. This includes the mainstreaming of disability-, age- and gender-sensitive considerations, as well as health-related vulnerabilities and those affecting victims of human trafficking and women victims of gender-based violence. This must be ensured throughout the migration and asylum process, primarily through compliance with the provisions on vulnerability set out in EU legislation and related case law.

10. The Assembly considers that it is important to propose concrete recommendations to the governments of the European Union member States on how to make sure that European migration policy contributes to the development of European solidarity, economic prosperity, respect for human rights and protection of the well-being of all. Therefore, it recommends:

10.1. amending the pact's proposed "screening regulation" to ensure that it includes an effective suspensive remedy against incorrect categorisation during screening in order to fully respect the obligations arising out of the right to an effective remedy (Article 13 of the European Convention on Human Rights (ETS No. 5)). The screening regulation should also guarantee access to information, the rights of people undergoing the screening, including access to a lawyer and the right to challenge the decision, and the privacy and protection of the data collected;

10.2. ensuring that every asylum seeker at the EU border or within its jurisdiction has access to and receives a fair and effective determination of the merits of their claim to international protection, in recognition of *non-refoulement* obligations. The legal fiction of "non-entry" should be removed to ensure that access to a fair procedure is guaranteed to all;

10.3. clarifying the provisions relating to restrictions on and deprivation of liberty, in particular during the screening procedure, to protect migrants and asylum seekers from unlawful detention and ensure conformity with the obligations flowing from the right to liberty and security (Article 5 of the European Convention on Human Rights), in line with the relevant case law of the European Court of Human Rights. Explicit references to the use of detention only as a measure of last resort should be included in the pact's proposals, with clear references to the obligation to work towards finding alternatives to immigration detention and implementing them. Asylum seekers and refugees should not be detained solely on immigration grounds;

10.4. ensuring that all children under the age of 18 are exempt from the proposed border procedures under the pact, in line with the principle of the best interests of the child and the obligations towards children, as outlined in the United Nations Convention on the Rights of the Child; similarly, all children (under the age of 18) should be exempt from detention;

10.5. agreeing on a mandatory relocation system as a measure of solidarity prioritising the cases of family reunion and unaccompanied migrant children;

10.6. reconsidering the proposal to allow States to opt for "return sponsorship" instead of relocating people to their own territories, as it raises serious human rights and legal concerns;

10.7. clarifying in the pact's proposals the concrete support that must be made available to persons identified as being in a vulnerable situation, including comprehensive support that meets basic health and welfare needs addressing specific vulnerabilities. Reference should be made to existing obligations on the provision of special procedural and special reception guarantees for vulnerable persons;

10.8. making sure that a cross-cutting assessment of the impact of the proposals on women and girls, as well as boys, in a vulnerable situation is undertaken by the European Union and identifying the different impacts of the proposals. Proposals should be made to address any inequalities found;

10.9. conducting a cross-cutting review of the proposals to determine compliance of the provisions with obligations towards persons with disabilities, in line with the obligations under the United Nations Convention on the Rights of Persons with Disabilities; in particular, the duty on States to provide reasonable accommodation to persons with disabilities should be explicitly included as an obligation;

10.10. introducing into national legislation special legal provisions prohibiting the criminalisation of non-governmental organisations or individuals carrying out search-and-rescue operations at sea or providing humanitarian or other forms of assistance to migrants, asylum seekers and refugees;

10.11. increasing the capacity of search-and-rescue operations in the Mediterranean Sea and establishing predictable disembarkation arrangements in safe ports for rescued persons;

10.12. ensuring that relevant non-governmental organisations working in the field of migration can provide information and legal assistance and take part in monitoring fundamental rights at borders. This entails the possibility for such organisations to be granted access to border areas and places of deprivation of liberty in order to provide humanitarian assistance and legal advice and assistance;

10.13. ensuring that both the European Border and Coast Guard Agency (Frontex) and the new EU Agency for Asylum carry out their respective duties in full compliance with fundamental rights.

11. The Assembly also considers that the European Commission should continue to hold EU member States accountable for their treatment of migrants, asylum seekers and refugees by fully exercising its powers under EU law to institute infringement procedures and other less stringent measures, such as monitoring, making recommendations and providing and withdrawing funding, whenever member States fail to fulfil their human rights obligations, including in relation to the prohibition of *refoulement* and violence against migrants, asylum seekers and refugees at the European Union's external borders.

12. The Assembly welcomes the proposal to establish independent monitoring mechanisms at the national level to investigate allegations of fundamental rights violations at borders. Taking into account the Council of Europe's competence in this field, the Assembly calls on Council of Europe member States to make sure that these national monitoring bodies are independent from national authorities, work on the basis of clearly defined mandates, are accessible to migrants, asylum seekers and refugees and take into account and act upon relevant information provided by international organisations, non-governmental organisations and EU agencies and institutions. Furthermore, these monitoring mechanisms should have sufficient resources to exercise their functions and have well-trained staff, and should prepare periodic and public reports containing findings and conclusions, including steps to hold to account those responsible for violations of fundamental rights. It is highly important to broaden the scope of the monitoring by these bodies to ensure that they can monitor cross-border events and border-control activities.

13. The Assembly encourages the European Commission to consider further supporting the development of co-operation programmes with the Council of Europe to ensure consistent knowledge sharing among national monitoring bodies in order to strengthen their contribution to the effective implementation of the European Convention on Human Rights and other relevant instruments.