



Work on the Common European Asylum System (CEAS) after the Pact

Introduction

The political agreement reached on the reform of the CEAS is a milestone. After years of negotiations, the Member States and EU agencies will implement important improvements to their border and asylum systems: intensified screening and registration of all irregular migrants, accelerated processing of unfounded asylum claims at the external border to prevent misuse of the asylum procedure for other purposes, a stronger Dublin system to discourage secondary migration, a structural and mandatory (crisis) solidarity mechanism for support among Member States, and extensive monitoring to make sure the new rules are well implemented.

The adoption of the Pact is an achievement, but the work is not done. The entry into force of the new system will likely disclose remaining and new gaps in our asylum management. The NL calls upon the new Commission to continue and deepen the work on the asylum system, focused on those areas where more control is needed and where shortcomings need to be tackled.

Required actions

- **Improve monitoring and compliance** with the rules by all Member States, making full use of existing and newly available instruments, **and explore migration conditionality** to create even stronger incentives for Member States to fully contribute to EU migration priorities.
- **Increase the number of mandatory border procedures**, to guarantee that in the long term the majority of unfounded asylum claims will be swiftly processed at the external borders, to prevent the misuse of the asylum procedure. This requires work on the necessary preconditions as well: corresponding increased amounts of solidarity contributions, and improvement of return rates.
- Thorough **review of the safe third country concept** so that Member States are better able to address migration challenges through a fair sharing of responsibilities with third countries, including through out-of-the box arrangements.
- **Address the asylum system's remaining weaknesses and bottlenecks** with a targeted legislative review: adaptation of the elements of the Pact which turn out as inefficient in practice, and introduction of better instruments to tackle problems such as public-order issues around reception centres and the ability to reduce the level of reception conditions for nationals from safe countries of origin.
- **A long-term EU-coordinated approach** towards reception and return of **displaced persons from Ukraine** that encompasses viable and flexible options for legal stay as well as envisages a coordinated approach for return to Ukraine if the situation allows it.
- **Full equipment of the supporting agencies, including EUAA** to ensure coherence between the priorities set at political level and the implementation at operational level in Member States and third countries.

Rationale and elaboration

Improve monitoring and compliance, and explore conditionality

The Commission's role in inspiring mutual trust among the Member States in the good governance of their respective asylum, reception and border systems will be paramount. We call upon the Commission to make full use of all existing and newly available instruments to monitor, enforce and incentivize compliance fully. The Pact entails promising instruments to achieve this, for instance the monitoring framework of the EUAA-regulation and the AMMR's annual migration management cycle. But there are additional ways to create incentives to contribute to the common EU migration priorities as well. Stronger conditionality of the AMIF and IBMF funds, as well as the application of other forms of budget conditionality could be explored.

Increase the number of mandatory border procedures

The mandatory border procedures send a strong and dissuasive signal to migrants that usage of the asylum system for migration with other purposes will be pointless, while they at the same time ensure the orderly and humane reception of people in need of protection. They also enhance Member States' abilities to decide on who may enter their territory and who should be refused. The notion of 'adequate capacity' is of major importance to keep the border procedures realistically operational. The agreed upon number of 30.000 is an



important first step, but the long-term goal should be that the majority of unfounded asylum claims is swiftly processed at the external borders. The planned review, three years after entry into force of the AMMR and APR, should establish a progressive trajectory towards this goal, outlining the necessary reinforcement of capacities at the level of the Union spread over several years. This will only be feasible if Member States are able to uphold the responsibilities following from this progressive trajectory. Therefore, the annual numbers for relocations and financial contributions to the solidarity mechanism should be increased correspondingly and a boost should be given to effective (forced) return of persons whose claim has been refused in the border procedure (see return non-paper).

Review of the safe third country concept

Member States' needs to address migration challenges through a fair sharing of responsibilities with third countries, including through out-of-the box arrangements, are increasing. A timely and concise Commission-led review of the safe third country concept, one year after the date into entry of the CEAS reform, should provide proposals to improve the applicability of the concept. Limitations and criteria such as the connection – that do not have a basis in international law – must be critically revised.

Address the asylum system's remaining weaknesses and bottlenecks

The entry into force of the new asylum system will disclose remaining and new gaps in our asylum management system. Rather than a new comprehensive package, the Commission can provide for a targeted and specified legislative review, starting with proactively identifying bottle-necks or interpretation issues that hinder Member States to effectively implement the new legislation. The review should additionally focus on those areas the Pact did not sufficiently cover, and where Member States are still in need of better instruments to address the system's remaining weaknesses:

- Prevention of improper use of asylum procedures or reception facilities: In order to avert the misuse of asylum procedures by persons from 'safe countries of origin' or countries with low recognition rates, Member States should be able to reduce the level of reception conditions, or ultimately be able to apply detention to this group.
- Instruments to handle public-order issues in and around reception centres: Limitation of reception conditions and, as a measure of last resort, exclusion from reception should be allowed in cases of grave misconduct, or following an accumulation of instances of misconduct.
- Remove incentives that might encourage dangerous journeys by minors: lower threshold to return UAM's under the Dublin system to the Member State of the first asylum request.

A long-term EU-coordinated approach for displaced persons from Ukraine

The EU has shown unity and solidarity in response to the Russian invasion of Ukraine in February 2022. While the Temporary Protection Directive provided a well-functioning legal basis for hosting displaced Ukrainians in the EU up until now, the time has come to solidify our concerted approach in a long term strategy. This will provide clarity not only towards Ukraine and Ukrainians, but would also be instrumental to avoid fragmentation amongst Member States and secondary movements as a consequence. Our common strategy should encompass viable and flexible options for legal stay as well as envisage a coordinated approach for return to Ukraine if the situation allows it. That means, for example, that we should look beyond the option of asylum and that we should seek collaboration with the Ukrainian authorities to combine efforts related to reconstruction with the potential of Ukrainian human capital currently present in the Member States.

Full equipment of the EUAA

The EUAA has grown tremendously in size and commitment in recent years. Monitoring of the implementation of the legislation will be one of the main core tasks of the EUAA. The Commission and the EUAA should work together to facilitate regular discussion of the shortcomings arising from operational monitoring at the political level (JHA Council), to ensure coherence between the implementation of legislation by Member States and the achievement of political priorities. The Commission and Member States should also enable the EUAA to further develop their activities in third countries, in line with strategic and geographic priorities set by the Council.