

Editorial: Migration Pact Agreement Point by Point

What was agreed? What are the consequences? Where are we now?

ECRE will analyse the detailed texts of the General Approach, when they are available. In the meantime, 48 points can already be made on the agreement reached yesterday among the EU Member States on the Pact on Migration and Asylum to reform EU asylum law.

1. The EU Member States have reached an agreement on key pillars of the EU asylum system, responsibility, solidarity and procedural rules. The agreement has been under discussion throughout the Swedish Presidency.
2. This is not the final word – the Council will negotiate with the Parliament on the basis of this agreement and the Parliament's respective agreement in order to reach a common position which will become law. However, it is to be expected that Parliament will concede – and these are more or less the positions likely to be adopted.
3. The agreement reduces protection standards in Europe, which is kind of the point. Whether it will meet its other objectives of deterring arrivals, rapid returns or reducing so-called secondary movement remains to be seen.
4. Two countries opposed the agreement: Hungary and Poland, primarily on the basis that they don't believe that Europe should have an asylum system. Four countries abstained: Bulgaria, Malta, Lithuania and Slovakia, for different reasons in each case.

The headlines

5. Overall, states have agreed on labyrinth of procedural rules, byzantine in their complexity and based on trying to limit the number of people who are granted international protection in Europe.
6. They fail to address the major dysfunction of the system, the Dublin rules, which escape largely intact.
7. An underlying objective is to transfer responsibility to countries outside Europe, even though 85% of the world's refugees are hosted outside Europe, mainly in desperately poor countries. The targets are the countries of the Western Balkans and North Africa, through the use of legal tools such as the "safe third country" concept. Nonetheless, the reforms do nothing to increase the likelihood that these countries agree to host people returned from the EU.
8. Within Europe, the reforms increase the focus at the borders.
9. As such, the reforms go in the opposite direction to the successful response to displacement from Ukraine, which demonstrated the value of light procedures, rapid access to a protection status, allowing people to work as soon as possible so they can contribute, and freedom of movement which allows family unity and a fairer distribution of responsibility across Europe.

Procedural changes

10. Instead, new elements include expanded use of border procedures, inadmissibility procedures, and accelerated procedures, and the Pact deploys legal concepts to deflect responsibility to other countries, such as the safe third country concept. More people will be stuck at the borders in situations akin to the Greek island model.
11. There will be an expanded use of the border procedure with it becoming mandatory for people from countries where the protection rate is 20% or below.
12. Countries in the centre and north insisted on this change before agreeing to solidarity because their primary concern is ending so-called "secondary movement". Safeguards such as access to legal assistance or to an appeal are reduced. There will be almost no exemptions for vulnerable people, families or children, and more procedures will be managed in detention.

No new responsibility rules

13. The rules on responsibility remain the same as now under Dublin, with the principle of first entry still in place.
14. The period of responsibility of the country of arrival for an applicant is extended. It will be two years for people who enter at the external border, but reduced to 15 months after a rejection in the border procedure (to give states an incentive to use the border procedure), and reduced to 12 months for those rescued at sea (to give states an incentive to stop watching people drown).
15. The improvements to the rules on responsibility (compared to Dublin) proposed by the Commission have been rejected, including a wider family definition to allow family unification with siblings.

A new solidarity mechanism

16. To compensate for the effects of the rules, a solidarity mechanism is introduced to compensate the countries at the borders in situations of “migratory pressure”. A separate mechanism for situations of search and rescue has been rejected.
17. Solidarity is mandatory but flexible, meaning that all countries have to contribute but that they can choose what to offer: relocation and assuming responsibility for people; capacity-building and other support; or a financial contribution.

The numbers

18. The states have agreed on a minimum of 30,000 people to have their applications processed in a border procedure every year. There will also be a “cap”, a maximum set several times this number which increases over the first three years.
19. Member States’ individual adequate capacity (minimum number or target for border procedures) will be set using a formula based on the overall adequate capacity and the number of a “irregular” entries (i.e. people arriving to seek protection).
20. Member States can cease to use the border procedure when they approach their target with a notification to the Commission.
21. At the same time, the target for relocations is also set at 30,000.
22. There is an incentive to provide relocations (rather than other solidarity) in the form of “offsets” (reductions of solidarity contributions for those offering relocation).
23. The financial equivalent of a relocation is set at EUR 20,000. Money will also be provided from EU funding for reception capacity to manage the border procedure.

The good news

24. This is the beginning of the end of the reforms.
25. There is a solidarity mechanism, to be codified in EU law.

The bad news

26. Expanded use of the border procedure equals more people in detention centres at the external border, subject to sub-standard asylum procedures.
27. With the increase in responsibility for countries at the border, and given how controversial centres are for local communities, there is a risk that they choose pushbacks instead. If Italy’s share of the 30,000 annual border procedure cases is 5000, for example, are they likely to go ahead with detention centres or to deny entry?
28. Setting a numerical target for the use of the border procedure – which will almost always take place in detention – creates the risk of arbitrariness in its application.
29. The rules on responsibility remain as per Dublin. The Commission’s improvements have been removed so the incentives to avoid compliance, for instance on reception conditions, remain.
30. There is strong encouragement of the use of “safe third concept” as a basis for denying people access to an in-merits asylum procedure or to protection in Europe.

31. The definition of a safe third country has been eroded as Member States will decide which countries meet the definition. A country needs to meet certain protection criteria and there needs to be a connection between the person and the country, as per international law. However, what constitutes a connection is determined by national law. Examples in the text are family links and previous residence, but a MS could decide that pure transit is a sufficient connection.
32. Solidarity is flexible. If Member States can choose, how many will choose relocation? Relocation of people across the EU would lead to a fairer division of responsibility instead of too much being required of the countries at the external border.
33. The procedural rules appear complex to the point of unworkability.

Uncertain as yet

34. What has been agreed on offsets – solidarity obligation offsets (reductions in a country's solidarity obligations to others) in the case of offering relocation places and solidarity benefit offsets (reductions in solidarity entitlements of a country under pressure) in the case of failure to accept Dublin transfers.
35. Definition of migratory pressure and whether and how it incorporates "instrumentalisation" and SAR.

What will change in practice?

36. More of the people arriving to seek protection in Europe will be subject to a border procedure, rather than having their case heard in a regular asylum procedure.
37. People will still arrive seeking protection in Europe but they will face a harsher system.
38. Responsibilities of the countries at the external borders are increased, which continues to provide an incentive to deny access to territory and to keep standards – on reception or inclusion, for example – low.
39. There could now be greater focus on implementation and management of asylum systems. However, the only concrete references to compliance are in relation to achieving the set number of border procedures and in ensuring Dublin transfers happen.
40. Onward ("secondary") movement is still likely, and smugglers will continue to adapt, offering more to take people to countries away from the external borders.

The winners

41. The Commission, which has invested everything on getting the Pact passed. "Trust and cooperation is back in the Council," according to the Commissioner.
42. France, the Netherlands and the other hardliners, who have largely got what they wanted.
43. The Swedish Presidency, which has brokered a deal and one that suits them – as a less than honest broker. The Minister's presentation at the press conference underlined secondary movement and enforcement of Dublin.
44. Smugglers, who will be able to charge more for the more complex and longer journeys that people will have to take.

The losers

45. Refugees, for whom access to a fair asylum procedure will be harder. Risk of detention is higher. Risk of pushbacks is increased. Length and complexity of procedures is increased.
46. Non-EU countries at the borders who will deal with more pushed back people and who will be under pressure to build asylum systems to be safe enough to be "safe" third countries.
47. The Med5+ who have conceded on every major point and gained very little. They will have to manage the border procedures and, while solidarity is mandatory, it is flexible, meaning that relocation is not prioritised. It all begs the question: what have they really been offered in return?
48. Germany, which refused to stand firm and defend the even minor improvements that the government coalition agreement required, and on which it had the support of a small progressive alliance, and potential alliances with the south. For example, on exemptions to

the border procedure. Given the desperation to reach a deal more could and should have been demanded.

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