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European Council
on Refugees and Exiles

QUO VADIS EU ASYLUM REFORM? STUCK BETWEEN GRADUAL APPROACH, (MINI)-PACKAGE DEALS AND “INSTRUMENTALISATION”

**ECRE’S ANALYSIS AND RECOMMENDATIONS
ON HOW TO EXIT FROM PERPETUAL REFORM
OF EU ASYLUM LAW, AND TO PREVENT
FURTHER EROSION OF STANDARDS**

Policy Paper 8

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INTRODUCTION

In June 2022, the rather active French Presidency of the Council of the EU wrestled an agreement from the Member States on three key legislative proposals, the reforms of the Schengen Border Code (SBC), the Screening Regulation, and the Eurodac Regulation. In exchange, an agreement was also reached on a voluntary solidarity mechanism, as set out in the Solidarity Declaration signed by a majority of the Member States. These developments are part of the “Gradual Approach”, the term used by the French for the agreement they planned to broker to take forward the long-stalled reforms of EU asylum law.

This advance in negotiations is an exception to the rule, however. Very limited progress has been made on most of the legislative proposals that are part of the Pact on Migration and Asylum launched in September 2020.¹ In addition, certain proposals from the 2016 reform package,² along with the 2018 recast Return Directive,³ are still formally under negotiation. The situation is further complicated by the introduction of yet more proposals in 2021, specifically the aforementioned proposal for an amended Schengen Borders Code⁴ and the proposal for a Regulation addressing situations of instrumentalisation in the field of migration and asylum⁵ (hereafter the “Instrumentalisation Regulation”), which together could be termed the “instrumentalisation package”.

Time is running out. As the European Parliament and European Commission both end their mandates in spring/summer 2024, there is under two years to conclude the process, which involves each of the co-legislators, the Council and the European Parliament, deciding on its position, and entering negotiations with the other, and then the two mutually agreeing on the legislation for adoption. While the European Parliament and the rotating Presidencies of the EU recently agreed on a roadmap⁶ which covers nine legislative proposals (not including the SBC reforms or the Instrumentalisation Regulation), it is not realistic that all or even most of the legislative proposals are adopted in this timeline. It is more likely that a partial reform takes place, with two or three legislative proposals making it through the process on the basis of one or more “mini-deals”, whereby Member States agree to certain elements of the reform packages. Although the European Parliament remains wedded to a “package approach”, meaning that all (or most) of the proposals should move forward together, in practice it is likely to accept a partial reform based on agreements that emerge from the Member States. Having taken over from the French, the Czech Presidency plans to make progress on some of the 2020 proposals, to revive some of the 2016 proposals, and to reach agreement on the 2021 Instrumentalisation Regulation. The subsequent Swedish Presidency will then take up the reins.

This Policy Paper focuses on the most likely of the possible partial reforms and “mini-deals”. It describes three possible deals, analysing the positions of the co-legislators, and provides recommendations on individual files based on minimising the damaging impact on the right to asylum in Europe. It builds on ECRE’s detailed analyses⁷ of each of the legislative proposals.

1. This includes the following legislative proposals: European Commission, *Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817*, COM(2020) 612, 23 September 2020; European Commission, *Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, COM (2020) 611 final, 23 September 2020; European Commission, *Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]*, COM(2020) 610 final, 23 September 2020; European Commission, *Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum*, COM(2020) 613 final, 23 September 2020; European Commission, *Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of ‘Eurodac’ for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818* COM(2020) 614 final, 23 September 2020.
2. Those include the following legislative proposals: European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465 final, 13 July 2016; European Commission, *Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term resident*, COM/2016/0466 final, 13 July 2016; European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council*, COM/2016/0468 final, 13 July 2016.
3. European Commission, *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast)*, COM(2018) 634 final, 12 September 2018.
4. European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on rules governing the movement of persons across borders*, COM/2021/891 final, 14 December 2021.
5. European Commission, *Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum*, COM/2021/890 final, 14 December 2021.
6. European Parliament and Rotating Presidencies of the Council, *Joint Roadmap on the organisation, coordination, and implementation of the timeline for the negotiations between the co-legislators on the CEAS and the New European Pact on migration and asylum*, 7 September 2022. Available online here: <https://bit.ly/3UJpYp>.
7. See ECRE Comments on all legislative proposals available on this website: <https://bit.ly/3SgLP1x>

ANALYSIS

The following section describes the three most likely partial reforms based on mini-deals that could be agreed between the Council and the European Parliament, and the likely fate of agreements on two other individual files. It includes analysis on what is at stake from a protection perspective in each of these partial reform scenarios.

DEAL ONE: THE “GRADUAL APPROACH” – EURODAC REGULATION AND SCREENING REGULATION, PLUS A SOLIDARITY MECHANISM

In its first phase of the Gradual Approach set out by the French Presidency, the Council agreed on negotiation positions on the Eurodac and Screening Regulations in June 2022. The majority of the Member States are now eager to start trilogues with the European Parliament on these two files. The European Parliament however remains committed to a package approach, meaning that it will not agree to just two of the 2020 Pact proposals while others do not advance. More specifically, the Parliament does not want any legislative proposals to advance without an agreement on reform of responsibility sharing rules and solidarity, currently contained in the proposed Regulation on Asylum and Migration Management (RAMM), which repeals the Dublin Regulation.

The Council’s position on the Screening Regulation which it will take into the negotiations is concerning for a number of reasons. First, it confirms support for the fiction of non-entry,⁸ the claim that people undergoing the screening process have not entered the territory. Second, one of the positive elements of the Screening Regulation is the provision on an independent border monitoring mechanism, albeit with a too narrow scope, being limited to monitoring the screening process itself, rather than the overall situation at the border. The Council position proposes further reducing the scope of the monitoring mechanism rather than expanding it. Third, an obligation for people to cooperate has been introduced, alongside the possibility to impose penalties for non-compliance. Finally, there are also extended powers for verification using additional databases compared to the Commission proposal.

The Parliament is taking a more rights-based approach to the proposal but it has yet to adopt a position on certain crucial issues, including the fiction of non-entry, the possibility to appeal the outcome of the screening process, and on whether as a result of the screening people can be refused entry at the EU’s borders.

In exchange for agreement on these legislative proposals, which largely reinforce the responsibilities of the countries at the external borders, the Member States agreed on a solidarity mechanism. The Solidarity Declaration announced in June sets out a voluntary solidarity mechanism, based on relocation from the Mediterranean region. This intra-state agreement is not legally binding; certain Member States have so far chosen not to support the mechanism. Given the imbalance in legal weight between binding legislation and a voluntary mechanism, there are efforts to bring the solidarity piece on par with the legislative changes through strengthening the legal basis of and rendering mandatory the solidarity mechanism. This includes reflections on using, removing or replacing elements of the RAMM. While the June Declaration creates some momentum – and any agreement on solidarity is to be welcomed – whether a mandatory and formalised mechanism can be agreed remains to be seen, given that the traditional blockages in the Council on solidarity remain (see point on RAMM below).

The new Italian government may have a significant impact on the prospects for an agreement on this deal based on the Gradual Approach. A “political” government led by the extreme right may decide not to maintain Italy’s support for the deal, on the basis that the solidarity component is not strong enough. However, it may be that Italy’s support was garnered through economic and financial promises, beyond the migration sphere, in which case the support of the incoming government may be maintained, given the pending financial challenges. A further complication is that the result of the Swedish elections raises questions about the role of the Swedish Presidency – which will start in January 2023 – in supporting a functioning Common European Asylum System and related reforms.

8. For a discussion of the concept, please see Kelly Soderstrom, An Analysis of the Fiction of Non-Entry as appears in the Screening Regulation, Commentary commissioned by ECRE, September 2022. Available online here: <https://bit.ly/3BLWqmd>.

Agreement on some of the following 2016 proposals: Reception Conditions Directive (RCD); Qualification Regulation (QR); Union Resettlement Framework (URF)

Partly in order to persuade the European Parliament to enter negotiations on the Screening and Eurodac proposals despite its commitment to the package approach, the Czech Presidency has proposed to pick up negotiations on three of the legislative proposals from 2016 on which provisional compromises had been reached between the European Parliament and the Council in 2018. These are the Qualification Regulation (QR), Reception Conditions Directive (RCD) and Union Resettlement Framework (URF). At the time, the Council reneged on the provisional agreement, and the proposals have been on hold since.

What seems to be proposed by the Czech Presidency is that these three proposals are adopted as per the 2018 provisional agreement. However, given the lack of a final agreement at the trilogue stage on the proposals, they could re-open during the negotiations. This creates the risk of a deterioration in the positions set out in the provisional agreements or alternatively an opportunity to improve the level of protection provided.

ECRE has analysed the content of the provisional agreements of 2018, and highlighted necessary improvements to the three compromise texts.⁹ For the QR proposal, this relates to the internal protection alternative and ensuring that it is an optional provision in general and totally excluded in cases where persecution emanates from a state actor. In addition, the removal of non-state actors as actors of protection in the text is essential. In relation to the RCD proposal, ECRE urges the co-legislators to seize the opportunity of the negotiations to ban the detention of asylum-seeking children, whether accompanied or unaccompanied, as per the Parliament's negotiating position. In addition, the compromise on the complete withdrawal of material reception conditions or reduction of other material reception conditions should be revisited. On the URF, it is vital that the potential of a joint EU framework for resettlement is seized but that it does not lead to a lowering of standards for resettlement as a protection pathway. Therefore, the deletion of the provisions on conditionality must be maintained, in line with the 2018 compromise.

DEAL TWO: INSTRUMENTALISATION PACKAGE – AMENDED SCHENGEN BORDERS CODE (SBC) AND THE INSTRUMENTALISATION REGULATION (BOTH PRESENTED IN 2021)

In parallel to the 2020 Pact proposal for reform of the core elements of the asylum system, there is a new set of legislative proposals from 2021. Inter alia, the SBC amendments and the Instrumentalisation Regulation introduce mechanisms for derogating from obligations on asylum in response to situations of “instrumentalisation of migrants”, which is a new concept to be introduced into EU law. Derogation is already allowed in some circumstances (tightly circumscribed by the CJEU). The 2020 Pact proposals, and specifically the Crisis Regulation, proposes expanding the use of derogations in situations of crisis and what it terms force majeure. The content of the derogations in the Instrumentalisation Regulation includes some of the elements of the 2020 Pact (e.g. expanded scope and length of border procedures; removal of the suspensive effect of appeal) and goes far beyond that by providing the widespread use of derogatory measures. The content of the derogations in the Instrumentalisation Regulation includes some of the elements of the 2020 Pact (e.g. expanded scope and length of border procedures; removal of the suspensive effect of appeal), as well as additional derogations.

ECRE has argued that there are significant risks attached to the introduction of a model based on allowing derogations, especially given that this is an area of law where non-compliance of Member States with EU standards, both in terms of scale and prevalence, is significant. The Council's position on the SBC from June 2022¹⁰ has, inter alia, expanded the definition of instrumentalisation such that instrumentalisation of migrants can be caused not only by third country governments but also by non-state actors, thus allowing Member States to derogate on the basis of instrumentalisation in a greater range of circumstances. The Member States' position also significantly expands the category of actions that can be taken in response to instrumentalisation, and further reduces access to territory through allowing reduction of border crossing points. Other worrying provisions of the SBC proposal were supported by the Council with limited amendments, including MS checks within the territory, introduction of an automatic return mechanism at the EU's internal borders, and the use bilateral readmission agreements with people being subject to return decisions without an individual assessment.

9. ECRE, *Policy Paper: Asylum at the European Council 2018: Outsourcing or Reform?*, August 2018, available online at: <https://bit.ly/3SioC5L>.

10. Council of the European Union, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders - General approach*, 9713/22, 9 June 2022.

Member State negotiations on the Instrumentalisation Regulation have started under the Czech Presidency which hopes to conclude them with a Council position by the end of the year. The eagerness with which many Member States, including those whose ultimate motive is to dramatically reduce or even abolish the right to asylum in Europe, call for the negotiation and adoption of the Instrumentalisation Regulation proposal is telling. However, there is broad support for the proposal, going beyond the hardline countries. While there are attempts by some Member States to lessen the impact of the measures, for instance, by reducing the scope of derogations or supporting the exemption of certain groups with particular vulnerabilities, this does not address the core problem of the Instrumentalisation Regulation: it creates a mechanism that undermines harmonisation and the commonality of asylum rules in Europe, by allowing Member States to opt in and out of the CEAS at will.¹¹

On the Parliament's side, consideration of the two proposals has started but the Rapporteurs are yet to present their reports. From a fundamental rights perspective, the Rapporteur and Shadow Rapporteurs group looks promising for the SBC, however this is not the case for the Instrumentalisation Regulation. Significantly, the Instrumentalisation Regulation and SBC reform are not included in the package approach supported by the EP. This means that these two proposals could run separately; their progression would not be conditional on any other proposal also moving forward. Thus, while the EP could effectively block the Screening and Eurodac Regulations on the basis that an adequate deal on solidarity has not been reached, this does not apply to the Instrumentalisation Regulation and SBC reform.

DEAL THREE: PACKAGE/ ROADMAP – REGULATION ON ASYLUM AND MIGRATION MANAGEMENT (RAMM) AND THE REVISED ASYLUM PROCEDURES REGULATION (APR) IN ADDITION TO SCREENING AND EURODAC REGULATIONS

The Parliament supports a package of reforms which includes the RAMM and APR proposals, in addition to the proposals on which the Council has already agreed its position, the Screening and Eurodac Regulations. The Roadmap agreed by the two institutions reflects this broader approach. It could also be seen as the Gradual Approach progressing from step one, described above, with a second step, which sees the voluntary solidarity mechanism replaced by the solidarity mechanisms in the RAMM, thus providing a stronger legislative basis.

There are considerable disagreements on both the RAMM and the APR in both the Parliament and the Council. Thus, it remains doubtful as to whether it is realistic for the co-legislators to find an agreement on either of the files and following that, mutually agreeing a compromise. Member States remain divided on solidarity and thus on reform of the Dublin Regulation, with little progress on the Council side on the RAMM, which repeals Dublin and introduces new rules on responsibility sharing, along with solidarity mechanisms. The June Solidarity Declaration signalled that most (although not all) Member States can be persuaded to cooperate when solidarity is voluntary and loosely defined but going further and including solidarity mechanisms in legislation, and rendering solidarity mandatory, is a step too far for many. On the other hand, for Member States at the southern border, sometimes working together as the Med 5 group, solidarity mechanisms are not sufficient: they want to see a deeper reform of the rules on responsibility sharing while the RAMM largely preserves – indeed arguably reinforces – the Dublin rules. In the absence of these deeper reforms, then they want mandatory solidarity mechanisms which focus on relocation.

The Council plans to start discussions to build on the Solidarity Declaration by developing a mechanism that provides mandatory solidarity and which could become a permanent, mandatory and legally regulated mechanism. The discussion will also cover replacing parts of the RAMM to take this forward. Whether these discussions will lead anywhere is far from clear.

Disappointingly, and in contrast to the previous mandate, it appears that the Parliament's position on the RAMM will not support the necessary reforms of the responsibility sharing rules, in part due to the position of the Rapporteur. The position of the previous Parliament was a proposal in the form of the "Wijkstrom Report" which envisaged a deeper reform of Dublin to create new rules for fairer responsibility sharing. While other political groups continue to advocate promising positions, such as the removal of the first country of entry criterion, the narrow majorities in the EP and the more hardline positions taken by the EPP group compared to its role in the previous Parliament, mean that the EP's position may not substantially improve the Commission's proposal.

The Member States have similarly made little progress on the APR proposal, which was first put forward in 2016

11. For a list of concerns related to the proposal, see ECRE NGOs call on Member States: Agreeing on the Instrumentalisation Regulation will be the Final Blow to a COMMON European Asylum System (CEAS) in Europe, available online at: <https://bit.ly/3Btxu11>.

and then presented again as an amended proposal in 2020. Again, there is a call for negotiations to be picked up under the Czech Presidency but the likelihood of converging positions remains slim due to the perceived disproportionate responsibility that the introduction of mandatory asylum and return border procedures would mean for Member States at the EU's external border, along with other additional procedural requirements. On the EP's side, the negotiations continue, based on the Rapporteur's report which unfortunately did not address the complex labyrinth¹² of substandard procedures, legal uncertainties, and increased focus at the border. To what extent the damage of the proposal can be limited via the EP's position depends on the outcome of the negotiations on whether the border procedure remains mandatory and on who will be subject to it, as well as on the other proposed procedural changes.

ECRE's analysis of these proposals focuses on the unfairness for the applicants as well as the negative consequences for refugees of proposals that increase the responsibilities of countries at the borders (such as increasing denial of access), an additional factor to bear in mind is the complexity and workability of the proposals. The fact that the Commission's initial proposals appear unworkable and do not address the dysfunctionality of the current system means that, even if there were an agreement on a position in the EP and the Council (the latter seems very unlikely), and then following negotiations an agreement between the co-legislators (still more unlikely), the system created would probably not be workable in practice.

ON THE OTHER REMAINING PROPOSALS

The following two proposals, the Crisis Regulation and the recast Return Directive, are not being discussed as part of any specific partial reform deal, but their fate is nonetheless linked to the developments on the negotiations of other files. For instance, the recast Return Directive, is cross-referenced in almost all of the other legislative proposals included in the three deals discussed above.

The proposed Crisis and Force Majeure Regulation (presented as part of the Pact in 2020)

The main purpose of the Crisis Regulation is to allow Member States to derogate from certain obligations that exist under the RAMM legal regime when they are experiencing situations of either crisis or of what is termed force majeure (although it is an adapted use of the term), and to adjust solidarity requirements at the same time. In a sense, it is a precursor of the ideas that have been reintroduced and expanded on in the Instrumentalisation Regulation. Therefore, the relationship between the two proposals is far from clear. The Parliament has made progress on the file and the Rapporteur presenting a report containing an alternative proposal, which is close to ECRE's suggestion of a crisis prevention mechanism with strengthened solidarity provisions. However, the Parliament has not yet established a position on the expanded scope and duration of the border procedure, which is also part of the proposal. In the Council, the proposal has not yet been discussed in substance. The fact that the EC's proposal repeals the Temporary Protection Directive from 2001, which was activated in March 2022 and is currently used to provide protection to over 4 million people who have fled from Ukraine, creates additional complications and reasons to reconsider the proposal in any form.

The recast Return Directive (presented in 2018)

In May 2019, the Council agreed on a partial general approach on the Commission proposal for a recast of the Return Directive covering all aspects apart from the border procedure.¹³ There are several worrying elements in the Council position. It introduced a new definition of return to "a third country where the third country national has a right to enter and reside" or as a last resort return to "any third country with which there is an EU or bilateral agreement on the basis of which the third country national is accepted and allowed to remain" and where international human rights standards according to the International Covenant on Civil and Political Rights are respected. The Council deleted some concerning provisions for assessing the risk of absconding but the list remains long and non-exhaustive, and the position would allow Member States to add criteria in national legislation (meaning that it remains very likely that a risk of absconding will be found, thus providing a ground for detention). The Council position maintains the obligation on the applicant to cooperate and added more criteria to the obligations on the applicant. It also proposed that Member States should be able to require the third country national or another person who has signed a declaration facilitating entry and stay in the EU,

12. ECRE, *Procedural charts based on analysis of the proposed reforms to asylum procedures of 2016, supplemented and partially amended in 2020*, May 2021, available online here: <https://bit.ly/3LIIRxb>.

13. Council of the European Union, Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) – Partial general approach, 12099/18, 23 May 2019.

to cover removal costs, including detention. In the Council position, entry bans should not exceed ten years (rather than five) and may also be contingent on the payment of the costs of return.

The Parliament is in the process of finalising its report, both trying to limit the damage of the Commission proposal but also to improve standards where possible. Positive amendments have been included on the risk of absconding, the best interests of the child, the definition of vulnerability, detention, the right to be heard, the obligation to cooperate, and the length of time allowed for voluntary departure – although this is shorter where there is a risk of absconding. The border procedure has also been deleted. Agreement still has to be found on several important provisions; this is expected in the autumn. The discussions are further complicated, however, by links that have been made between this recast and the revised APR proposal, as well as amendments to the recast Return Directive having been included in proposals on Instrumentalisation and reform of the Schengen Borders Code (see above).

RECOMMENDATIONS

ECRE's position remains that no reform of asylum law is better than a bad reform of asylum law than a bad reform which reduces standards and exacerbates the unfairness of the current system for people seeking protection, as well as for Member States. Nonetheless, ECRE recognises that the co-legislators wish to conclude some form of agreement and that only a partial reform, rather than the adoption of all proposals, is realistic. In this context, ECRE believes it is necessary to examine which of the possible partial reforms is least damaging from a protection perspective and to propose amendments to ameliorate the proposals that are most likely to move forward.

On the Screening Regulation

ECRE urges co-legislators to:

- Delete the fiction of non-entry in Article 4 which is misleading in that people are on the territory and under the jurisdiction of EU states as per the judgments of European courts.
- Delete the refusal of entry as an outcome of the screening process in Article 14.
- Ensure a monitoring mechanism that is independent, broad in scope and which significantly increases accountability for all human rights violations at the external border.
- Introduce the possibility of an appeal of the outcome of the screening process to ensure that every individual can contest the decision on referral which is effectively an administrative act.

In addition, given the likelihood that the Screening Regulation will be adopted in a deal which does not include the Asylum Procedures Regulation (which has a lower chance of being adopted), the screening process needs to be considered as a stand-alone procedure. Specifically, no further reduction of safeguards to accommodate the highly problematic APR proposal should be agreed.

On the Reception Conditions Directive (should it re-open in the negotiations)

ECRE urges the co-legislators:

- To seize the opportunity of a potential reform to ban the detention of asylum-seeking children, whether accompanied or unaccompanied, as per the Parliament's negotiating position.
- To further amend the provisional compromise text on Article 11(2) by deleting letters a) and b), maintaining only the possibility of detention of children "in exceptional circumstances, as a matter of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively and after detention is assessed to be in their best interest in accordance with Article 22." (Should the Institutions decide to maintain child detention as an exceptional measure.)
- To revisit the compromise on Article 19 and delete the possibility to completely withdraw material reception conditions or reduce other material reception conditions.

On the Qualification Regulation (should it re-open in the negotiations)

ECRE recommends the co-legislators:

- To seize the opportunity to delete altogether the possibility to consider non-state actors as actors of protection
- To amend Article 8(1) of the compromise text so it provides that the determining authority "may examine if an applicant is in need of international protection where he or she can safely and legally travel to and gain admittance...".
- To delete the second sentence of Article 8(1a) in the compromise text in order to exclude the existence of an internal protection alternative when persecution emanates from a State actor.

On the Union Resettlement Framework (should it re-open in the negotiations)

ECRE recommends the co-legislators:

- To swiftly adopt the Union Resettlement and Humanitarian Admission Framework (URF) in order to establish a more structured, predictable and longstanding EU policy on resettlement. The position in the provisional agreement between the Parliament and the Council in 2018 should be maintained.

On the Schengen Borders Code amendments

ECRE urges the European Parliament:

- To remove references to and the definition of instrumentalisation from the SBC.
- To amend the harmful elements of the proposal, such as border checks and the return procedure at the EU's internal borders, in order to minimise harmful impact.

On the Instrumentalisation Regulation

ECRE calls on the co-legislators:

- To abandon this proposal which will, once adopted, undermine all possible agreements on asylum and risks leading to a dismantling of the CEAS by creating a situation where Member States follow different rules.

On the Regulation on Asylum and Migration Management (RAMM)

ECRE proposes that:

- As the EC's proposal does not rectify the current dysfunctionality of the system and provide an overhaul of the way in which solidarity is shared in the EU, the Council is unlikely to come to a position on the file and the EP's position is unlikely to rectify the shortcomings of the EC's proposal sufficiently, the proposal should be abandoned.

On the amended Asylum Procedures Regulation (APR)

ECRE proposes that:

- The proposal should be abandoned, given the reduction in standards and the complexity which makes it unworkable in practice; it is based on a model of containment at borders with disproportionate responsibility for countries of entry.
- If the APR proceeds, the border procedure should not be rendered obligatory and the inadmissibility procedure (in the regular procedure) should be removed.

On the Crisis and Force Majeure Regulation

The response to displacement from Ukraine has demonstrated that the EU can deal with mass arrivals of people in a short period of time. The main elements of an effective response include freedom of movement inside the EU; choice for people concerned; and EU support to MS.

In light of these developments and insights, ECRE recommends that:

- The proposed Regulation should be withdrawn.

On the recast Return Directive

If trilogues begin, ECRE urges the Parliament:

- To resist compromise on harmful Council insertions, including on return to third countries other than the country of origin or habitual residence; asking third country nationals or their sponsors to pay for their own detention or return; the expansion of entry bans; and the obligation to cooperate.
- To expand rather than reduce opportunities for third-country nationals to leave humanely and with dignity. ECRE recommends a minimum time limit of 30 days to prepare for voluntary departure in all cases, and no less than 7 days, even in exceptional circumstances.



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