

THE EU PACT ON ASYLUM AND MIGRATION: PUTTING NEW RULES TO THE TEST

ECRE'S EARLY ASSESSMENT OF THE APPLICATION OF THE EU PACT ON MIGRATION AND ASYLUM AND ITS IMPACT ON ASYLUM APPLICANTS' RIGHTS.

I. INTRODUCTION

After lengthy negotiations and a two-year implementation period, the Pact on Migration and Asylum became applicable on 12 June 2026.

The transition to the new framework has presented several challenges. Member States report delays in putting the necessary legislation, systems and capacity in place, despite the two-year period intended to prepare for application. Debates on [further reforms](#) of EU asylum and migration rules and '[innovative solutions](#)' are ongoing, and risk shifting attention towards further legislative changes at a time when Member States should be focusing on ensuring that the rules they have just agreed are effectively implemented and that the safeguards they contain are respected.

This policy note provides an early assessment of the application of the new EU asylum framework from the perspective of civil society, building on ECRE's previous analysis of the [state of play](#) of Pact implementation and on its work throughout the negotiations. It examines developments at EU level and the first months of application in Member States. ECRE remains critical of the Pact and the reduction in standards it entails. It focuses its work on ensuring that the safeguards included in the new framework are applied in practice to reduce fundamental rights risks and to identify opportunities for improving protection for asylum applicants and beneficiaries of international protection. The note thus concludes with policy recommendations to EU institutions and Member States to ensure that the application of the Pact is carried out without further eroding the right to asylum at either the national or European level.

II. ANALYSIS

EU-level developments in view of the application of Pact provisions

Since the publication of ECRE's Policy Note assessing the state of play on Pact implementation in October 2025, several key steps have been taken at EU level towards implementation of the reformed CEAS.

On 11 November 2025, the European Commission (henceforth, 'the Commission') launched the first Annual Migration Management Cycle under the Pact with the publication of the European Annual Asylum and Migration Report and its annex on the state of play of Pact implementation. The Commission also adopted its Implementing Decision pursuant to Article 11 of the AMMR, identifying Cyprus, Spain, Greece and Italy as countries under 'migratory pressure', followed by the Council's implementing decision on the establishment of the Solidarity Pool on 22 December.

On 29 January 2026, the Commission presented the European Asylum and Migration Management Strategy, based on the national strategies submitted by Member States, only some of which have been made publicly available. In May 2026, the Commission published its final pre-application state of play on implementation, noting that several Member States had still not adopted the legislation necessary to adapt their national systems. Following the Pact's entry into application on 12 June 2026, the EUAA began its first monitoring exercises under the new framework, covering Slovakia, Malta and Bulgaria.

In July 2026, the Commission also published its first evaluation on whether systemic shortcomings in the Dublin systems could justify the exclusion of countries benefiting from solidarity measures under the AMMR. No particular concerns were identified regarding Cyprus and Spain, while Greece and Italy required further monitoring, particularly in light of Italy's refusal to accept transfers. A final assessment is expected in October. By 15 October 2026, the Commission should also publish its second European Annual Asylum and Migration Report.

While at EU level, the steps foreseen by the Pact have been taken, the first months of application of the new rules point to significant challenges in the functioning of the new framework at national level.

Delays in implementation and persistent non-compliance

Most of the Pact framework consists of regulations, which are directly applicable from 12 June 2026. However, several provisions leave discretion to Member States, either through 'may' clauses or by requiring specific matters to be regulated in national law. This includes provisions concerning important safeguards, such as the establishment of independent monitoring mechanisms. National legislation and implementing measures are therefore still necessary to give full effect to the new framework. By the time of writing, most Member States have adopted the majority of the necessary legislation, although some did so after the 12 June deadline (i.e. Denmark, Latvia and Portugal). There are notable exceptions. Spain only presented a draft law with amendments to the national asylum and immigration laws after the events in Ceuta in August 2026. In France, implementing decrees and accompanying technical guidance were published only days before the Pact took effect. The government's enabling bill was rejected by the National Assembly's Law Committee - a position likely to be confirmed after the summer recess - leaving several provisions requiring legislative changes (including border procedures) unimplemented for the moment. Malta has so far only partially adopted the necessary measures. Bulgaria, Hungary, Poland, Romania and Slovenia are further behind, with key implementing legislation still not adopted or, in some cases, not yet presented to national parliaments. In other Member States such as Belgium and Italy, transposition of the recast Reception Conditions Directive (RCD) remains pending. In July, the Commission opened infringement procedures against 16 Member States for failure to notify national measures transposing the recast RCD. These delays are particularly concerning given the two-year period available to Member States for preparing implementation. They lead to new provisions being applied unevenly, as authorities began applying directly applicable provisions before the national legal and institutional arrangements needed to give them effect are fully established. This is particularly problematic where national legislation is needed to determine how procedural safeguards and appeal rights or restrictions on applicants are to operate in practice.

Moreover, the entry into application of the Pact has not resolved persistent failures to comply with existing EU asylum obligations. In Belgium, single male applicants continue to face difficulties in accessing reception, while in Italy, non-compliance with the Dublin Regulation persisted for more than three years in the context of the state of emergency declared by the Italian authorities, and concerns regarding acceptance of transfers have continued after the Pact became applicable. Reports of pushbacks and lack of access to asylum at the EU's external borders have also continued, including in Greece, Latvia, Lithuania and Poland. The challenges observed in the first months of application confirm that the introduction of the new framework is not, in itself, suitable to remedy pre-existing issues of non-compliance, including with Member States' existing obligations under EU and international law.

The events occurred in Ceuta in August 2026 also illustrate the limited role that the Pact has, so far, played in shaping responses to situations of increased arrivals. Despite the existence of new instruments, including the Crisis and Force Majeure Regulation, the response remained largely based on national measures rather than on the activation of Pact mechanisms. While Spain did not request to make recourse to the Crisis Regulation – as the crisis was considered related to migration management rather than asylum rules – hundreds of people remained unable to register their applications and access reception conditions in the weeks that followed, despite having made asylum applications.

Implementation in practice: worsening conditions and gaps in safeguards

The entry into application of the Pact has in some cases created additional challenges.

In the Netherlands, the IND has prioritised applications lodged after 12 June 2026 to meet the shorter decision deadlines under the Pact. This directly affects more than 54,000 applications pending before 12 June, for which waiting times will consequently increase. Similar distinctions between pre- and post-12 June applications have emerged in Belgium and Ireland, where administrative capacity is being redirected towards new cases leaving other applicants to face even more significant delays.

The implementation of the Pact also resulted in more restrictive conditions for applicants. In Germany for example, applicants subject to AMMR procedures can now be hosted in dedicated “secondary migration” centres, offering more limited opportunities in terms of access to services. In Spain, civil society organisations observed that draft legislation presented in August introduced provisions that would contribute to a creation of a more restrictive asylum system, such as a national safe-country list, non-mandatory grounds for border procedures and longer periods of deprivation of liberty during screening and border procedures. Similar concerns have been expressed in Luxembourg by civil society organizations, that criticised the national implementing law as marking a worrying shift toward a more security-driven migration policy, at the expense of fundamental rights.

A key concern is the implementation of procedural safeguards, particularly during screening and border procedures. Reports point to shortcomings in vulnerability identification, information provision and legal counselling. In Bulgaria, the conversion of the Pastrogor transit centre into a closed reception facility has been accompanied by reports of poor conditions, violence and limited access to legal and social support. In Greece, *de facto* detention has been reported in Evros, where applicants in border procedures are deprived of their freedom of movement without consistently receiving decisions formalising the measure. In Italy, field research identified difficulties in effectively identifying vulnerabilities during screening, while organisations in the Netherlands have reported that screening forms focus on clearly visible vulnerabilities and that detention has also been applied to vulnerable applicants. In Ireland, around 1,100 applications had reportedly been processed under the new framework by August 2026, raising concerns about whether applicants can access adequate information, legal assistance and vulnerability support within the applicable timeframes, given the pace of procedures and constraints on civil society access and legal aid capacity. Notably, Irish civil society organisations report a decrease in the number of applicants identified as vulnerable compared with the pre-Pact period.

Problems in several countries have emerged regarding the implementation of rules on legal counselling and information provision. In Germany, concerns have been raised about the independence of counselling where it is entrusted to state authorities, while funding for civil society counselling faces significant cuts. Conversely, Denmark offers a positive example, with counselling provided by the Danish Refugee Council (DRC) expanded beyond asylum procedures under the APR also to responsibility determination procedures under the AMMR. In Greece, new rules provide for remote group counselling, involving up to 15 applicants and up to 50 in situations of large arrivals. Lawyers report being unable to access individual files and that authorised Ministry officials are able to attend counselling sessions; the National Commission for Human Rights called for the withdrawal of these provisions due to concerns regarding confidentiality and independence of the counselling services provided. The Swedish Bar Association has also called for amendments to national rules on legal counselling. In Italy, courts have already identified shortcomings in information provided to applicants subject to border procedures. Funding concerns have been reported in France, where counselling at the border currently relies on volunteer lawyers and in Portugal, where NGOs are currently providing it without a dedicated budget.

Independent monitoring is a mandatory safeguard under the Screening and Asylum Procedures Regulations. By July 2026, the EU Agency for Fundamental Rights (FRA) reported that most Member States had at least embedded the required monitoring mechanisms in national law or entrusted their functions to specific institutions. However, this has not automatically led to the operationalisation of monitoring activities in time for the roll-out of screening and the new rules on asylum border procedures. In Bulgaria, for example, the Ombudsman is expected to monitor screening, but the necessary legal basis and funding are reportedly still lacking, while Italy has not yet established its mechanism at the time of writing. Poland and Portugal have yet to operationalise and fund the Ombudsman’s role, and in Malta the Parliamentary Ombudsman reported in September that it had not been informed of the appointment of the national mechanism or invited to participate in its operation. In Sweden, the body initially identified by the Government as responsible for monitoring has reportedly questioned its suitability for the role. These delays raise concerns about the availability of independent oversight from the outset of the new procedures.

Emerging case law on Pact provisions

These shortcomings have already generated litigation in several Member States. In Austria, the Federal Administrative Court held in [June](#) and [August 2026](#) that requiring applicants subject to the border procedure to remain in an airport transit area on the basis of a non-appealable procedural order was incompatible with the safeguards applicable to restrictions on freedom of movement. In Italy, [several decisions](#) of the Civil Court of Palermo have suspended or revoked residence obligations imposed in the context of border procedures, including where applicants' vulnerability had not been adequately considered or information on the restriction and avenues of appeal had been insufficient. In Trieste, litigation is ongoing concerning the application of the border procedure to an applicant entering Italy across the internal border with Slovenia, including the question of whether the area can be treated as a transit zone. The Supreme Administrative Court of Lithuania [held](#) that an entry ban defines an asylum seeker's position in the border procedure but does not by itself justify detention. Dutch courts have already submitted three cases to the CJEU. Two references concern the [scope of judicial review](#) under the AMMR, including whether applicants can invoke the [best interests of the child](#) in challenging transfer decisions, while a third [concerns](#) the compatibility of the automatic use of detention in the border procedure with safeguards established by EU law, including the requirement to consider less restrictive alternatives and access to effective legal assistance. In some cases, litigation has also resulted in stronger safeguards: in France, administrative courts have [recently](#) held that, under the current EU asylum rules, withdrawal of reception conditions can only be partial in certain specific circumstances.

III. RECOMMENDATIONS

The first months of application of the Pact demonstrate that the adoption of a new legal framework does not resolve longstanding deficiencies in national asylum systems or ensure compliance with fundamental rights. The safeguards contained in the Pact, including individual assessment of protection needs, access to information and counselling, specific guarantees for children and vulnerable applicants, fair procedural standards and independent monitoring must be treated as essential components of the new system and properly implemented. EU institutions and Member States should therefore focus on making the framework already adopted work in practice, in full compliance with the Charter of Fundamental Rights, the Refugee Convention and the principle of non-refoulement. Against this background, ECRE puts forward the following recommendations:

Member States should:

- » Provide clear national legal rules and guidance where the Pact leaves national margin for discretion. In particular, ensure that all Pact safeguards are operational from the outset, including by strengthening vulnerability identification, providing clear and accessible information, ensure access to independent legal counselling and to legal representation, and put in place specific measures addressed to children and persons with specific needs.
- » Ensure that the exercise of the discretion provided by the Pact does not result in the lowering of existing national safeguards or in restrictions that are disproportionate or incompatible with superseding obligations under constitutional, EU and international law.
- » Ensure that administrative resources are sufficient and dedicated to process both pre-existing caseloads and applications lodged under the new framework. Additionally, establish and adequately resource independent monitoring mechanisms, ensuring that they are operational in practice, sufficiently independent and able to access all necessary information to carry out their functions.

The European Commission should:

- » Closely monitor the application of the Pact on the ground, including through regular exchanges with civil society organisations and other independent actors, and use its enforcement powers where Member States fail to fulfil their obligations under the new framework or continue to violate applicable EU asylum law.
- » Ensure that EU funding and implementation support address identified operational gaps, including regarding information provision, legal assistance, reception conditions and independent monitoring, and use available information from civil society to identify where additional support is required.
- » Ensure that guidance to Member States on the implementation of the Pact is clear and precise, and fully consistent with fundamental rights as enshrined in primary EU law.

The EUAA should:

- » Ensure that findings from its monitoring activities result in concrete and enforceable recommendations and follow-up measures, including where monitoring identifies recurring or systemic shortcomings in the implementation of asylum rules.
- » Expand training and practical support on the new framework to all actors directly involved in its implementation, with particular attention to areas where implementation gaps are emerging.
- » Use its existing operational plans and technical assistance to strengthen support in Member States where the first months of application have identified particular weaknesses.