



THE NEW PACT ON MIGRATION AND ASYLUM

**Floriana Pizzo
Ilaria Moioli
Erica Pulvirenti
Francesca Morgante
Livia Silvestri**

THREE PILLARS

1. MORE EFFICIENT AND FASTER PROCEDURES



PRE-SCREENING



BORDER
PROCEDURES

2. FAIR SHARING OF RESPONSIBILITY AND SOLIDARITY AMONG MS

3. STRONGER PARTNERSHIPS WITH THIRD COUNTRIES AND MORE EFFECTIVE
SYSTEM OF RETURNS

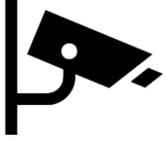


- ▶ In theory, the Dublin system is to be repealed, but in practice the Dublin system and the relocation program currently in place do not change a lot.
- ▶ In fact, the criterion of first entry is maintained, even for people who enter the EU without the necessary documentation by sea. It is the Commission that determines how many relocations will be needed and how to do it for operational and / or financial solidarity and it's always the Commission that states whether the contribution of other states is enough.
- ▶ The pact also allows members to opt out from participating in the relocation of asylum seekers and refugees within the EU by offering them the possibility to instead provide administrative and financial support to other member states



PRE-SCREENING

- ▶ The new Screening Regulation will ensure fast identification of the correct procedure applicable to a person entering the EU without fulfilling the entry conditions.
- ▶ It will also apply to:
 - ❑ Persons who, while not fulfilling the conditions for entry into the EU, request international protection during border checks.
 - ❑ Persons brought ashore in search and rescue operations at sea.
 - ❑ Persons apprehended within the territory if they have eluded controls at the external borders in the first place.



The screening process includes security, health and vulnerability checks, and registration of biometric data, identification, health and security checks, fingerprinting and registration in the Eurodac database.

- ▶ It should be carried out as close as possible to the external borders over a maximum period of 5 days. Where people will be accommodated during that time is not clear.
- ▶ The pre-screening procedure also leads to decisions which relate to access to asylum including whether to apply the accelerated border procedure relocation, and return.

Questions arise regarding access to information, the rights of people undergoing the screening, including access to a lawyer and the right to challenge the decision; the grounds for refusal of entry; and the privacy and protection of the data collected.

As Member States can easily discharge their responsibilities regarding medical and vulnerability screenings, it is not clear whether related needs will be detected and acted upon.

How will the screening will be monitored? What support will MS be given to carry out the screening?



► A welcome initiative is the **Independent monitoring**:

1) Member States are required to set up an independent monitoring mechanism. The Fundamental Rights Agency will propose guidelines for this. This new mechanism should also monitor compliance with the principle of *non-refoulement* as well as with the national rules on detention where they are applied during the screening. The annual **Migration Management Report** to be published by the Commission will evaluate results and propose improvements where appropriate.

2) A European quality control system related to the management of external borders and migration, in particular the **Schengen evaluation mechanism** and **Frontex vulnerability assessments**, will contribute to this process.

3) The new **European Union Agency for Asylum** will also monitor asylum systems.

4) The Commission will also carry out a more systematic monitoring of both existing and new rules. It will launch **infringement procedures** where necessary.

Who does the border asylum procedure apply to?

- Following the screening, if a person applies for asylum, their case will be examined under the border procedure if they are nationals of countries with low recognition rates for international protection, if their claim is fraudulent or abusive or if they pose a threat to national security.

➤ The border procedure will not apply to unaccompanied children and families with children under the age of 12.

- For other vulnerable people, the border procedure would only apply after an individual assessment where their specific needs can be taken into account.
- Those who do not apply for international protection following the screening will be channelled into return procedures.



How long does the asylum and return border procedures last?



The deadline for examining claims under the asylum border procedure should not exceed **12 weeks**, including a single appeal. Applications for international protection should be examined as quickly as possible while guaranteeing a complete and fair examination of the claims.

The duration of the return border procedure is also limited to 12 weeks. This period is additional to the one set for the asylum border procedure, and after the pronouncement of the Court. The new rules specify that a return order must be issued simultaneously with a negative asylum decision, speeding up existing practices.

In crisis times, both the asylum and return border procedure may be extended by an additional 8 weeks each.

Detention under asylum and border procedures



- ▶ The purpose of the asylum border procedure is to allow authorities to examine a claim without granting entry to the territory. In these circumstances, Member States may apply detention.
- ▶ While the border procedure for the examination of an application can be applied without recourse to detention, Member States should nevertheless be able to apply the grounds for detention during the border procedure in accordance with the provisions of the Reception Conditions Directive in order to decide on the applicant's right to enter the territory. If the relevant conditions and guarantees cannot be provided for at any stage of the procedure, Member States shall cease to apply the border procedure.
- ▶ Where an applicant who was detained during the asylum border procedure no longer has the right to remain, Member States should be able to continue applying detention for the purpose of the return procedure, respecting the guarantees provided for in the Return Directive.
- ▶ Where a person who was not detained during the asylum border procedure is subject to a return border procedure, they can be detained in line with the rules and guarantees provided for in the Return Directive.

- ▶ The purpose of the **end-to-end asylum and return border procedure** is to quickly assess asylum requests with little prospect of success or asylum requests made at the external border by applicants coming from non-EU Countries with low recognition rates.
- ▶ Stricter rules will also be introduced to discourage unfounded or subsequent applications with the sole aim of preventing removal.
- ▶ As said, both the asylum border procedure and the return border procedure can be extended for an additional eight weeks so five months each, prolonging the **maximum** amount of time spent in border detention to **10 months**.
- ▶ In addition, Member States can suspend registration of asylum applications for four weeks and up to a maximum of three months. **With no claim registered for weeks, people may be at risk of detention, deportation, refoulement and their rights to adequate reception and basic services can be severely affected.**

AIM OF THE NEW PACT OF MIGRATION AND ASYLUM



More efficient procedures will benefit both applicants and the asylum system more generally. Quick and fair decision-making will alleviate situations of protracted uncertainty for the applicant as well as foster confidence and contribute to a better functioning EU migration management system.



BUT...



This is predicated on two flawed assumptions - that the majority of people arriving in Europe do not have protection needs and that assessing asylum claims can be done easily and quickly. Neither are correct

AGE ASSESSMENT



- ▶ As part of the pre-screening procedures, MS will be required to **verify the age** of those arriving at the border, however the inability of the New Pact to address the highly fragmented age assessment policies, procedures and practices in European MS reveals a significant flaw in the New Pact.

- ▶ Age assessment is **crucial** for many reasons

first of all, the level of protection and guarantees addressed to children are stronger than the ones provided to adults.

Secondly, unaccompanied children and children under twelve years of age together with their families should be exempt from the border procedure unless there are security concerns.

Concerns...

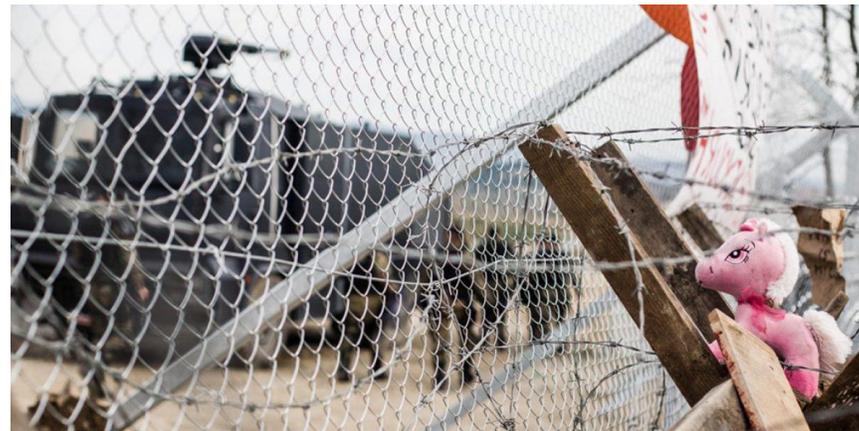
Fast procedures and age assessment

- ▶ the first concern is that such a **delicate process will be carried out while the screening phase is ongoing**: it's not clear how a properly **child-friendly and multidisciplinary age assessment**, which implies an individual based evaluation and **the cooperation of a number of experts**, could be carried out during such a phase, considering the **declared objective of the screening as to fasten procedures**.

Expertise of the staff at the screening procedure

- ▶ Another issue is the **expertise of authorities** entitled to carry out the age assessment.

Experts in dealing with children?
Will they be properly trained?



When at the border...



- ▶ According to the NPMA unaccompanied children and children under twelve years of age together with their families should be exempt from the border procedure unless there are security concerns.
- ▶ This means that there will be two categories of minors :

those who are under 12 years old

those who are over 12 years old



Concerns...



-DETENTION
-INTERVIEWS AT THE
BORDER
- LEGAL SUPPORT

- ▶ The first concern is whether applying border procedures to minors could be considered compatible with the **BIC**.
- ▶ Secondly, **distinguishing between children over or under the age of twelve** may pose significant practical problems, for instance in relation to carrying out sustainable age assessments at the border.
- ▶ Thirdly and most importantly, **such a distinction goes against the definition of child given by the UN Convention on the Rights of the Child**, along with the Fundamental Rights Charter of the EU and all legal instruments constituting the asylum acquis



A child is any person below the age of 18 → all children should benefit from their rights, and not just younger children.

INDIPENDENT MONITORING



- ▶ Under the New Pact, the proposal for pre-screening mechanisms foresees **independent** monitoring in an attempt to ensure fundamental rights are complied with.
- ▶ It's not clear how a **truly independent** monitoring could be carried out by the same members of FRONTEX. Furthermore, **the case study of violence and rights violations at the Croatian border**, despite Commissioner Johansson continues to claim Croatian authorities have put such a mechanism in place with the Commission's support, clearly indicates that the proposal made in **the NPMA**, giving little further explanation on how the independent monitoring will be implemented, is far from **setting a system able to truly arise the level of protection of human rights**.
- ▶ The full implementation of such a monitoring system would therefore require the creation of **truly independent monitoring mechanisms** that are led by National Preventive Mechanisms (NPMs) and independent NGOs and are funded directly by the Commission or through an independent agency.

Best interest of the child



The Commission has identified the needs of the most vulnerable as a priority. This of course includes **children**.

The Commission has declared that the New Pact on Asylum is a chance to strengthen the **safeguards** put in place by EU law for migrant children, ensuring that the **best interest of the child is the primary consideration, at every stage of the procedure**.

The main instruments to obtain the aim of safeguarding the best interest of the child are:

The swift appointment of a guardian

BIC has to be taken into account when making transfer decisions

a new and broadened concept of family

the right to be heard

swift family reunification procedures

effective alternatives to detention in the case of detention of minors and to ensure access to adequate accommodation

IN PRACTICE...



There are instances set out by the New Pact in relation to the compliance with the best interest of the child.

- ▶ **Assessment of best interest in general:** borders are not places where the best interest can properly be addressed. There is a strong need for a multidisciplinary approach in the assessment of their situations. It is not clear how border sites will be established and organized and if it will be possible to attain this level of protection and safeguard
- ▶ **The right to be heard:** There is also the risk that children will be interviewed the first time at the border with few safeguards.
- ▶ **Transfers:** the proposal affirms that unaccompanied children can be transferred back to the countries where they first lodged an application for international protection and this appears to set the safeguard of BIC aside.
- ▶ **Accommodation:** it's essential that MS continue to invest in building solid reception and asylum systems, instead of allocating resources on border facilities and processes that are not able to guarantee a screening that respects children's rights and safeguards.
- ▶ **Detention:** all children are subjected to the pre-entry screening so all children arriving in the EU irregularly could end up being detained for up to ten days. In case of children aged 12-18 travelling with families, children would be detained also within the border procedures (in case of crisis detention up to ten months). So immigration detention of children could become the rule rather than a measure of last resort.

COMMON EUROPEAN FRAMEWORK



The New Pact on Migration and Asylum puts in place a common framework for asylum and migration management at EU level to promote mutual trust between the Member States. And so the declared challenges are:

- ▶ ensuring a balance of efforts in dealing with asylum applications
- ▶ ensuring a quick identification of those in need of international protection

In order to implement the common framework A new mechanism is put in place

- ▶ The Commission- on its own initiative or upon request- determines that: a National System is “under pressure or at risk”

What other member states need to do to help the member state under pressure or at risk?

- ▶ **Relocation:** Accepting on their own territory some asylum seekers relocated from the Member State in difficulty

EU measures should ensure that relocation procedures are child - centred and that disputes between Member States can no longer leave migrants stranded at sea or at the borders

- ▶ **Return Sponsorship procedure:** taking responsibility for returning to the countries of origin people with no right to remain in the EU (It may consist in financial, political or diplomatic operational support)

*Children should be excluded from them. This measure doesn't take into account the BIC as a primary consideration.
When balancing the child's best interests and other considerations, non-rights-based arguments, such as those relating to general migration control, cannot override best interests' considerations*

- ▶ Once the assessment is complete , other member state contribute towards their “Fair share” each can choose whether to accept relocated migrants or to sponsor returns and they also have the option of contributing to other supportive measures

Conclusions...

- ▶ The novelty of the pact is in offering to the states that don't want to admit any asylum seekers, the alternative of collaborating in the return sponsorship.
- ▶ The hope for the commission is that thanks to the greater programming capacity and the innovative tools of return sponsorship, the tension on the Dublin System would be alleviated.
- ▶ If there is a possibility that tension between states will be alleviated from all of this mechanism, it is because there would be a drastic reduction in the arrivals thanks to the measure to contain flows. In fact, with fewer arrivals it will be easier to find an agreement between the member states in the reception and transfer of people. But if the forced reduction of flow it would not be achieved the entire project may not achieve the desired result.

