



October 2021

FAQ

EU PACT ON MIGRATION AND ASYLUM



1. What's the EU Pact on Migration and Asylum?

The [EU Pact](#) on Migration and Asylum is a policy document that sets out the EU's agenda on migration for the years to come and a package of legislative proposals and recommendations. The Pact was presented by the European Commission in September 2020, with the purpose of “providing a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management”.

2. What's in the Pact?

The Pact includes five legislative proposals and four recommendations.

The legislative proposals, when adopted, will be binding EU law. They are:

- [Screening Regulation](#),
- amended [Asylum Procedures Regulation](#),
- [Crisis Regulation](#),
- [Asylum and Migration Management Regulation](#), and
- amended [Eurodac Regulation](#)

The four recommendations are non-binding instruments adopted by the Commission, which address:

- [situations of crisis](#),
- [resettlement](#),
- [humanitarian admission and complementary pathways](#),
- search and rescue [operations by private vessels](#),
- and facilitation of irregular entry” (as regulated by the so-called [Facilitation Directive](#)).

In addition, in April 2021, the European Commission adopted the [EU Strategy on voluntary return and reintegration](#), which is envisaged by the Pact and foresees new EU actions to increase the number of voluntary returns.

3. What is the Commission proposing?

In short, the Commission is proposing that everyone who enters the EU irregularly, or was disembarked after a search and rescue operation, goes through a mandatory pre-entry screening at the EU external borders. In the pre-entry screening, border officials would carry out security and identity checks; health and vulnerability screenings are possible but are not mandated. This pre-entry screening would also apply to people already in the EU territory, if they entered irregularly.

Furthermore, the proposals introduce mandatory asylum and return procedures at the borders, which could last for a total of 24 weeks or even 40 weeks in “situations of crisis”.

During both the pre-entry screening and the border procedures, [people will most likely be held in detention](#). In the pre-entry screening, detention will be automatic and apply to everyone, without any judicial overview or access to a lawyer, nor any decision on whether detention is necessary and proportional in the individual case. The pre-entry screening would apply to everyone, children and families included, and the border procedures would also apply to children above 12 if they are with their families, or independent of age for “national security” reasons.

The Commission also proposes complicated solidarity mechanisms to manage the arrivals, which would have to be agreed on an annual basis between countries. In particular, it proposes that states can choose to either relocate people in their own territory, or organising and paying for the deportation of people of specific nationalities (for instance, sponsoring states could select nationals of third countries with which they have a bilateral agreement) - a proposal which raises [more questions than answers](#).

The Pact also proposes to reform the EU asylum system, and would replace the Dublin Regulation. See [here](#) for more detail from civil society organisations working on asylum.

Lastly, the Pact [would exclude access to residence procedures and regular pathways](#) besides asylum. In fact, states would be required to issue a return decision together with the rejection of an asylum application, and would automatically channel into return procedures everyone who does not qualify for international protection, with [no possibility to apply for other permits](#). [Default return decisions would also be applied to children, without any evaluation of whether return is in their best interests](#). Unsurprisingly, the **[Horizontal substitute impact assessment on the EU Pact on Migration and Asylum](#)**, conducted by the European Parliament, highlighted the lack of specific procedural safeguards to ensure the respect of the principle of *non-refoulement* and the risk of *fundamental* rights violations.

4. What does the Pact mean for undocumented people living in Europe already?

Undocumented people living in Europe will be subject to pre-entry screening if they cannot show that they entered Europe regularly. This means that, at any time, they can be apprehended and detained for up to three days, without any safeguards such as free legal aid, judicial review, nor the right to contact their family. At the current state of negotiations (October 2021), it is still unclear whether at the end of this screening undocumented people who have already been living in the EU and who do not apply for international protection (refugee status) will be subject to return procedures at the borders or in the country.

Moreover, people living undocumented in Europe might at any time be uprooted from the country they live in and be transferred to another EU country. This would be possible because of how the return sponsorships work: in fact, states can contribute to organise the return of undocumented people from other EU states, even before a return decision is taken. If the return does not take place within eight months from the beginning of the procedure, undocumented people will be transferred to the sponsoring state. It is still completely unclear what will happen to them in the new country, but the options are all grim: either being detained during a new return procedure, or being stuck in a limbo and forced to live as undocumented in a country where they don't speak the language, have no social ties or support network. This will also apply to children.

As countries will be able to indicate the nationality of people they intend to return under this scheme, we can expect an increase in discriminatory policing and profiling of people and communities of colour.

5. What will happen to people who arrive irregularly in the EU and to people disembarked after a search and rescue operation?

They will be immediately detained during the pre-entry screening for up to 5 days (or 10 in “situations of crisis”). At the end of the screening, they will either have access to asylum procedures (which can be either in the territory or at the borders), be channelled into return procedures (in the territory) or be refused entry to the EU territory (although, in practice, they are already physically in the EU) and returned with an even lower set of safeguards.

Asylum border procedures will be applied to people who come from a country with a recognition rate for international protection of below 20%, if there are national security reasons or if they have withheld or provided false information. In this case, the so-called “fiction of non entry” will continue to apply. Asylum border procedures may also be applied to people coming from a “safe country of origin” or “safe third country”.

The only exceptions will be for children under 12 years old and unaccompanied children, except if there are national security reasons. People might also be excluded from the border procedures for medical reasons.

In the asylum border procedures, people can be detained for up to 12 weeks. If the asylum procedure is not completed by the end of this time, they will be allowed to enter the territory. If the asylum application is rejected within the 12 week period, they will be channelled to the return border procedure, during which they will remain detained for a maximum of another 12 weeks. If they are not deported within this time, the return procedure will continue on the territory, where people will be detained under the Return Directive (according to which the maximum duration of detention can be no longer than 18 months in total).

Quite worryingly, the amended Asylum Procedures Regulation proposes that people whose application for international protection is rejected in the context of the asylum border procedure can be “refused entry”. This means that they can be returned at the external borders, with a lower set of safeguards. In this case, article 14 of the [Schengen Border Code](#) and the minimum standards set by art. 4(4) of the [Return Directive](#) would apply. Notably, an appeal against the refusal of entry does not have a suspensive effect. The possibility to apply this provision to people who have already been on the EU territory for almost 3 months (during the pre-entry screening and the asylum procedure regulation) is extremely concerning.

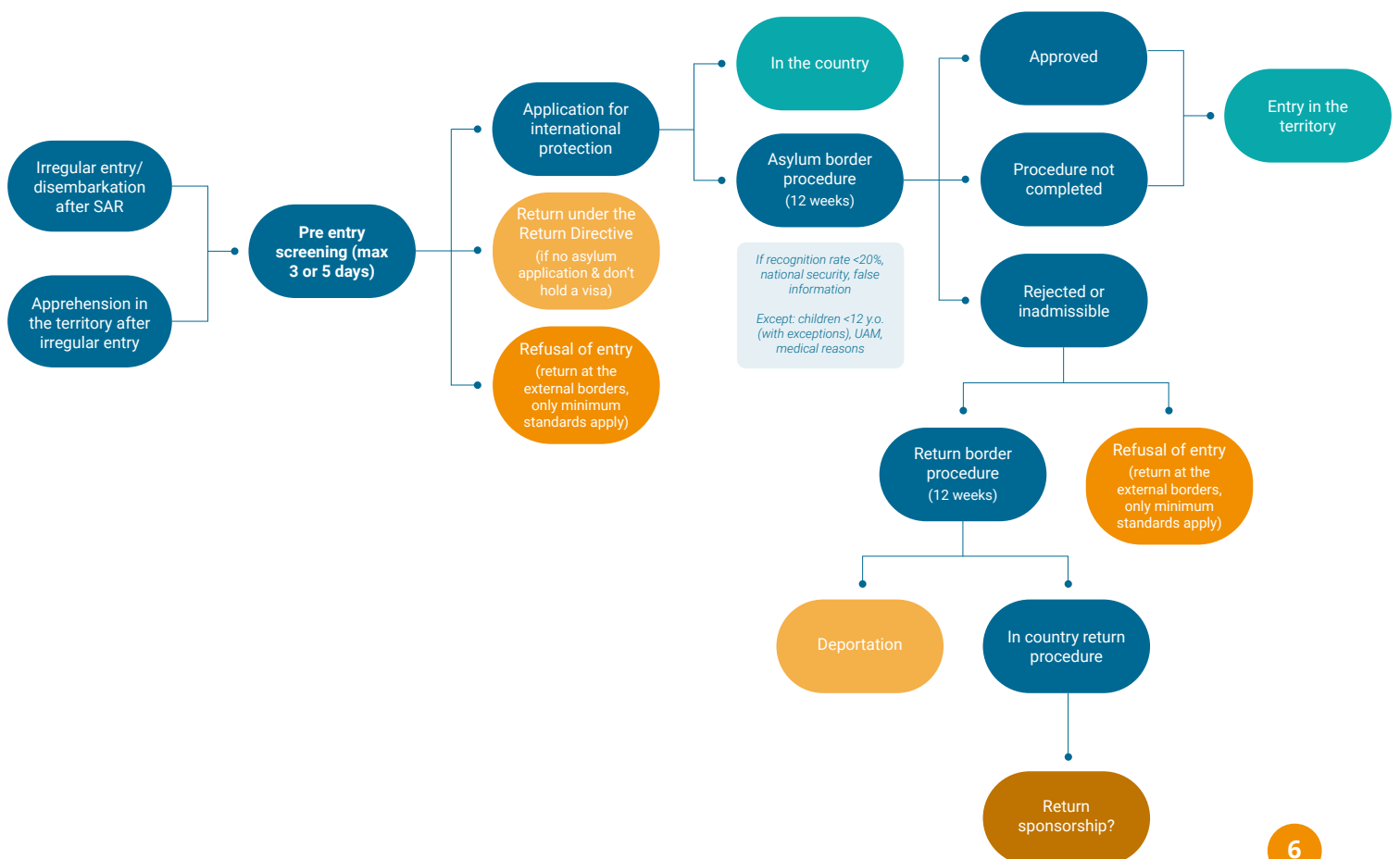
6. What about people who don't qualify for international protection?

Under national legislation, some people who do not qualify for international protection may be entitled to a residence permit or would have access to regularisation procedures or national protection measures different from asylum, including for medical, family, humanitarian or other reasons.

But the Pact foresees the right to asylum as the only possible pathway to regular residence, assuming that everyone else should leave the European Union.

So, in practice, those people who are not granted asylum but who could be entitled to a residence permit other grounds would nonetheless risk being deported, in clear breach of fundamental rights like family life, of the best interests of the child and of the principle of *non-refoulement*.

At the moment, at least [twelve](#) EU member states provide a temporary residence permit on medical grounds; at least [five](#) have legislation granting special permits for undocumented victims of domestic violence; at least [eight](#) have mechanisms that can regularise children, young people or families; and at least [seven](#) have dedicated procedures for stateless people. In practice, the Pact fails to mention when and how any of these permits would be accessible during the new procedures, or indeed that these other residence procedures exist. As the grounds for these permits are not assessed during asylum procedures, hundreds of thousands of people risk either being issued a return decision in violation of their fundamental rights, or pushed into living irregularly .



7. What is the “return sponsorship” mechanism?

Under the “[return sponsorship](#)” mechanism, the “sponsoring” state will facilitate the voluntary return or deportation of an undocumented person living in another country (“benefitting state”), including through return counselling, reintegration assistance, liaising with third countries, and chartering flights. Should the return or deportation not be carried out within 8 months (4 months in situations of “crisis” or risk of crisis), people will be relocated to the “sponsoring country”. Until then, the “benefitting” country will remain responsible for the obligations and responsibilities set out by the Return Directive. States might commit to sponsor returns even before a return decision has been taken.

8. What will be the main changes in situations of crisis?

The [Crisis Regulation](#) foresees different rules, mainly concerning timelines, which would apply in so-called “situations of crisis” and “force majeure”. Situations of crisis are defined as an exceptional situation of “mass influx” compared to the GDP and the population or the risk of an exceptional situation of “mass influx”.

In such situations:

- the pre-entry screening could last up to 10 days (instead of 5 days),
- the border procedures would be applied to people coming from countries with up to 75% recognition rate (instead of 20%), and could last for a total of 40 weeks (instead of 24),
- the grounds for detention are further expanded (for instance, including all situations in which migrants are not cooperating or express intent not to comply with the return measures);
- In the return sponsorship, people would be transferred to the sponsoring state after four months (instead of eight).

Furthermore, in case of *force majeure* states would be able to suspend the asylum registrations for up to 4 weeks.



What does the EU say about the returns of undocumented migrants?

The new mechanisms and procedures proposed may end up causing great harm to migrant children living and arriving in Europe.

The proposed Screening Regulation does not guarantee, or even mention, that children would have access to legal assistance or that unaccompanied children would be appointed a guardian. Alarmingly, no provisions are included that safeguard children whose age is disputed. In addition, all children would be detained during the screening procedure.

The Asylum and Migration Management Regulation grants children in families fewer safeguards than unaccompanied children on the assumption that having parents sufficiently protects them from harm. The return sponsorship mechanism would apply to both, but while Member States would have to assess whether the intra-European transfer is in the best interests of an unaccompanied child, no such obligation exists for children in families. Similarly, Member States would have to ensure that an unaccompanied child is “adequately protected” in the sponsoring state, but not so for children in families.

Children will also be detained to a much wider degree than is currently the case. Adolescent children in families may be detained for the same length of time as adults (maximum 40 weeks and 10 days if they go through a screening and an asylum and return border procedure in times of crisis), while international consensus is clear: [no child should be detained](#). The Pact also goes far beyond what is currently allowed by EU legislation (Returns Directive) and jurisprudence, which limit the detention of children for immigration purposes to specific situations (last resort, adapted facilities and for the shortest amount of time possible).

Importantly, the proposals do not ensure that children would only be returned when a return is in their [best interests](#). As with adults, the Pact proposals offer just two possibilities: asylum or return. While return should (in theory) only happen when there is no risk of *refoulement*, the impact on a child’s rights and wellbeing are not assessed before a return decision is issued or implemented.

Lastly, while the Eurodac proposal includes important safeguards protecting children, important dangers to child rights and children’s wellbeing remain. The safeguards require that:

- personnel that registers the biometric data of children be trained for that purpose;
- child-friendly information be provided to children;
- children’s personal data can be accessed, rectified and erased by the child and/or their legal guardian;
- children are accompanied throughout the registration process by an adult family member or guardian or by an independent official trained in safeguarding children’s best interests and their general wellbeing.

However, all children older than six would be fingerprinted and photographed, including for the purpose of (forced) returns. Children may be coerced into complying, although the level of coercion must “respect the dignity and physical integrity of the child” and not include

force. These provisions contradict [UN guidance](#) that arguments based on migration control cannot override the best interests of the child and the [FRA position](#) that children should not be fingerprinted for return purposes. In addition, the proposals do not include anything on what happens when a child's age is unclear or contested even though their age will determine whether they are fingerprinted, and whether the above-mentioned safeguards are put in place.

It is clear that the Pact does not adequately protect undocumented and migrant children from harm, and more and better safeguards need to be integrated throughout the proposals and mechanisms they put in place.

For more detailed information, see our [Recommendations on Safeguarding Children's Rights in the Migration And Asylum Pact Proposals](#).

10. What about labour migration and social inclusion?

While the Pact includes some promising elements towards inclusion, the significance of labour migration for European economies and societies is not reflected in the Pact, whether we look at the political messaging, resources, proposals, actions, or even word count. On balance, the plans in the area of labour migration are timid and over-shadowed by the focus on returns.

Since the Pact's publication, the European Commission has been working to fulfil commitments set out. It has held consultations on the next steps on regular migration. A Skills and Talent package, including a revision of the Long-term Residents Directive and a review of the Single Permit Directive, and setting out options for developing an EU Talent Pool is expected in late 2021. Negotiations between the European Council and European Parliament on the Blue Card Directive have also concluded.

The EU needs to take real action to increase decent labour migration pathways across sectors and skill levels, including in those sectors currently characterised by low wages, where many migrant workers are carrying out essential work and unable to access permits. It needs to tackle labour exploitation.

Until now, the legislative proposals that accompanied the Pact are rather counterproductive to these objectives, increasing precarity of migrant workers as described above. But it remains to be seen if the forthcoming actions - in particular the review of the Single Permit Directive - will be ambitious in achieving the EU's potential to address these challenges and promote decent work for labour migrants in the European Union.

11. What does PICUM recommend?

PICUM has developed extensive recommendations on the different files, as well as separate recommendations on the impact of the Pact on children's rights. Our recommendations are available in English, French and Spanish at this [link](#).

In short, our recommendations focus on the following:

- Preventing the automatic detention of asylum seekers and undocumented people at the external borders. PICUM advocates for the [end of immigration detention](#). People in an irregular situation should have access to community-based solutions and support through case management.
- Maintaining access to existing residence permits regulated at national level. Asylum and return are not the only options. National legal frameworks foresee a number of different permits, for instance for humanitarian, medical, family or other reasons: these permits should remain accessible in law and practice.
- More and better safeguards for children are necessary. Children should not be detained; unaccompanied children and children in families need to be protected to the same degree; children whose age is unclear or disputed must be given the benefit of the doubt unless and until conclusive proof confirms their (adult) age; unaccompanied children should be assisted by a guardian as soon as they are found; and children should only be returned when return is found to be in their best interests through a best interest procedure.
- Ensuring NGOs' right to access border areas and preventing criminalisation.
- Upholding the right to effective remedy, including an automatically suspensive appeal.
- Compulsory health and vulnerability screening and access to health care during the screening procedure.
- Preventing discriminatory policing and apprehensions.
- Deleting the return sponsorship scheme.

Do you have any question?

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