

Crisis and force majeure regulation

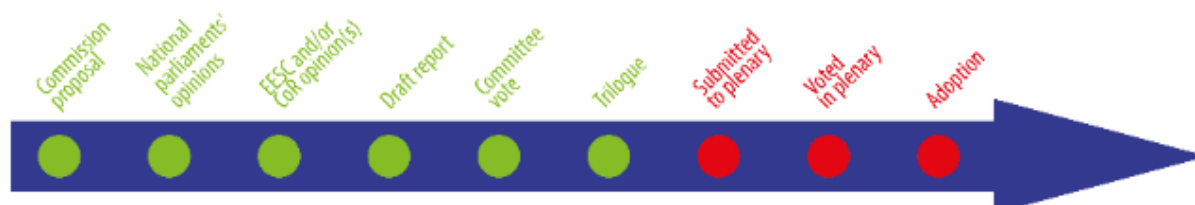
OVERVIEW

In September 2020, the European Commission proposed a new pact on asylum and migration, which includes a proposal for a regulation dealing with crisis and force majeure in the area of migration and asylum. The proposal aims to establish a mechanism for dealing with mass influxes and irregular arrivals of third-country nationals in a Member State.

The proposed regulation sets out a solidarity mechanism procedure, allowing derogations from the Asylum and Migration Management Regulation (AMMR) as regards the procedural timeframes. Other derogations from the AMMR concern crisis situations, more specifically the asylum crisis management procedure, the return crisis management procedure, and the registration of international protection applications.

On 20 December 2023, European Parliament and Council negotiators reached a provisional agreement on this proposal, which will be followed up in technical meetings before the agreement can be endorsed by the parliamentary committee and by the Member States. It will then need to be formally adopted by both Parliament and the Council.

Proposal for a regulation of the European Parliament and the Council addressing situations of crisis and force majeure in the field of migration and asylum		
<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2020) 613 23.9.2020
<i>Rapporteur:</i>	Juan Fernando López Aguilar (S&D, Spain)	2020/0277(COD)
<i>Shadow rapporteurs:</i>	Elissavet Ozemberg-Vrionidi (EPP, Greece) Malik Azmani (Renew, the Netherlands) Damian Boeselager (Greens/EFA, Germany) Silvia Sardone (ID, Italy) Jorge Buxadé Villalba (ECR, Spain) Konstantinos Arvanitis (The Left, Greece)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Final first-reading vote in plenary	



Introduction

Since the 2015 migration crisis, attempts to reform EU asylum policy with the aim of establishing a more efficient framework resistant to future migratory pressures have been largely unsuccessful, in particular because of an inability to reform the [Dublin system](#), which determines the EU Member State responsible for examining asylum applications.

In September 2020, in her State of the Union address, European Commission President Ursula von der Leyen announced a [new pact on asylum and migration](#) – a set of regulations and policies to create a more efficient and more sustainable migration and asylum process for the EU. As part of the package of legislative proposals, on 23 September 2020 the Commission adopted a proposal for a [regulation addressing situations of crisis and force majeure in the field of migration and asylum](#). This proposal concerns the application of the solidarity mechanism as set out in the proposal for a regulation on asylum and migration management ([AMMR](#)) for exceptional cases involving the mass influx or irregular arrival of third-country nationals or stateless persons in a Member State, potentially posing a risk to the functioning of the common European asylum system ([CEAS](#)).

The proposed crisis and force majeure regulation is seen as one element in a comprehensive policy framework representing a fresh start on migration, with provisions for an effective, flexible and structured response in cases of a crisis involving a mass influx of third-country nationals or stateless persons arriving irregularly in a Member State and also involving exceptional situations similar to the 2015 refugee crisis. It also seeks to address situations of force majeure in the area of asylum and migration management within the EU. In both cases, the aim is to ensure that Member States are able to manage the above situations through a specific set of tools and measures.

Existing situation

After a relative decrease in the number of people crossing the EU external borders irregularly in recent years, this trend has been reversed since 2021. According to [Frontex](#), the EU Border and Coast Guard Agency, the total number of detections of irregular border crossings at the EU's external borders increased by 18 % in the first 10 months of 2023, to nearly 331 600, the highest for the period since 2015. The western African route has seen the biggest rise in the number of irregular crossings, which nearly doubled in 2023 to over 27 700, the highest total for this route since Frontex began collecting data in 2009. Throughout 2023, the central Mediterranean remained the most active migratory route to the EU, with more than 143 600 detections reported.

Currently, the legislative act dealing with cases of an exceptional mass influx of irregular migrants is the 2001 [Temporary Protection Directive](#). This directive provides for the possibility to evacuate displaced persons from third countries, should the asylum systems of certain frontline Member States become overburdened. This procedure is to be triggered by virtue of a Council decision adopted by a qualified majority, where there is a risk that the Union asylum system would be unable to cope with the mass influx or imminent mass influx of displaced persons. Following Russia's invasion of Ukraine in February 2022, the EU – for the first time ever – [activated](#) the [Temporary Protection Directive](#) to grant immediate [temporary protection in the EU](#) to people fleeing the war. According to data from the [UN High Commissioner for Refugees](#) (UNHCR), about 5.9 million refugees from Ukraine had registered for temporary protection or similar national protection schemes in Europe by December 2023. Taking into account the situation in Ukraine, the Council [agreed](#) on 28 September 2023 to extend the temporary protection for people fleeing from Russia's war of aggression against Ukraine, from 4 March 2024 to 4 March 2025.

As part of the proposal for an [EU pact on migration and asylum](#), the Commission proposed to replace the Temporary Protection Directive by a [regulation addressing situations of crisis and force majeure](#) in migration and asylum policy more broadly, while also granting those affected immediate protection status.

Parliament's starting position

Parliament has consistently called for solidarity among the Member States and for a binding mechanism for the fair distribution of asylum-seekers among them. Parliament addressed the issue of an exceptional mass influx of irregular migrants in its [April 2015 resolution](#) – The latest tragedies in the Mediterranean and EU migration and asylum policies – in which it called on the Council to trigger the 2001 Temporary Protection Directive's solidarity mechanism in the case of mass and sudden inflows of displaced persons. In an [April 2016 resolution](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration, Parliament reiterated that in cases of mass influx, the Commission, acting on its own initiative or after examination of a Member State's request, can propose that the Council trigger the Temporary Protection Directive. It also stressed the need for a revision of the directive as part of a revision of the Dublin system, and for a clear definition of 'mass influx'.

Council starting position

The Council has on a number of occasions (e.g. in [June 2015](#), [October 2015](#) and [December 2015](#)) stressed the need for better containment of growing migration flows and for a [speedy conclusion](#) of the work on the package of seven legislative proposals aimed at reforming the CEAS.

Preparation of the proposal

Over 2019-2020, the Commission conducted targeted [consultations](#) on the pact on migration and asylum. These involved Parliament (the political groups) as well as the Member States, under the Romanian, Finnish, and Croatian Presidencies of the Council and in various forums – e.g. the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), the High-level Working Group on Asylum and Migration (HLWG), the irregular migration and expulsion working party (IMEX), the European Migration Network and the Readmission Expert Group. The Commission also organised consultations with civil society organisations through a number of meetings and conferences.

Considering the shortcomings in the way the Member States dealt with the mass arrival of refugees during the 2015 crisis, the [proposal for a crisis and force majeure regulation](#) came in response to the need for a structured approach at EU level to handling crises so as to avoid ad hoc responses. It seeks to complement the legislative framework in this area by adding specific procedural rules (and derogations) other than the compulsory solidarity mechanism and the procedures that would normally apply. This approach would therefore complement the operational and technical support that the European Union Agency for Asylum (EUAA) can provide should a Member State's asylum or reception systems become subject to disproportionate pressure.

More specifically, the proposal would provide a definition for a crisis situation, understood to be at hand in the case of an exceptional mass influx of third-country nationals/stateless persons arriving irregularly in a Member State and threatening the functioning of a Member State's asylum, reception or return system, or the risk of such a mass influx. It would widen the scope for the relocation of the third-country nationals affected to include international protection beneficiaries, irregular migrants and vulnerable persons being granted immediate protection for up to 1 year, until the Member State responsible for examining the application under the AMMR Regulation has been determined.

Concerning the return of irregular migrants, the solidarity mechanism procedure would reinforce the possibility for Member States to assist each other in carrying out returns, in the form of return sponsorship in crisis situations. According to this procedure under the proposed crisis and force majeure regulation, Member States providing return sponsorship would commit to returning irregular migrants on behalf of another Member State. Activities necessary for this purpose (such as return counselling, policy dialogue with third countries, and support for assisted voluntary return and reintegration) would be conducted directly from the territory of the benefitting Member State. If return was not finalised within 8 months, the irregular migrants would be transferred to the

territory of the sponsoring Member State in view of finalising the enforcement of return. Whereas the AMMR Regulation would provide for the removal of irregular migrants within 8 months, return sponsorship in crisis situations would include the obligation to transfer the irregular migrant if the person concerned did not return or was not removed within 4 months.

The crisis and force majeure regulation proposal would provide for other shorter deadlines compared with the usual procedures under the Asylum Procedures Regulation, when applicable in a crisis situation. These include the deadline for the Commission's assessment of a Member State's crisis situation, with serious consequences for the functioning of the CEAS; for the presentation of its report to the Council and the European Parliament; for the presentation of the solidarity response plan by the Member States after the Commission assessment; and for the adoption of a Commission implementing act on solidarity measures for each Member State referring to the number of persons to be relocated and/or subject to return sponsorship from the Member State in a crisis situation, and their distribution between Member States.

Regarding asylum and return procedures, the proposed crisis and force majeure regulation would include a number of derogations following the adoption of a Commission implementing decision, with the aim of allowing the competent authorities under strain to exercise their tasks diligently and cope with a significant workload. One major derogation would be the possibility for Member States to suspend the examination of applications for international protection of third-country nationals when those applicants face a risk of violence upon return to their country of origin and to grant them **immediate protection**, with the exception of cases where they represent a danger to the Member State's national security or public order. Member States would have the possibility to derogate from the AMMR Regulation in connection with the **asylum crisis management procedure**. In this case, the Member States would be able to take decisions on asylum applications lodged by third-country nationals from countries for which the proportion of positive first-instance decisions on international protection is 75 % or lower. They would also have the possibility to prolong the maximum duration of the border procedure for examining applications by an additional eight weeks before the applicant is allowed to enter a Member State's territory to complete the procedure for granting international protection (the proposed asylum procedures regulation would set the maximum time limit at 12 weeks).

Regarding the **crisis management procedure for returns**, Member States would be allowed to prolong the detention of third-country nationals/stateless persons with rejected applications under the asylum crisis management procedure by an additional 8 weeks. Moreover, as regards the **registration of international protection applications in crisis situations**, Member States affected would be allowed to register applications with a longer deadline – of 4 weeks – from when these were made. Extended deadlines would also apply for Member States submitting take charge requests (up to 4 months after the application's registration), Member States replying to such requests (up to 2 months after the request's receipt), take back notifications (1 month after receiving Eurodac confirmation), and the transfer to the Member State responsible from the notifying Member State (within a year of acceptance of a take charge request/take back confirmation from another Member State). Other provisions would allow transfers to Member States that are in force majeure situations to be frozen and their obligation to undertake solidarity measures suspended for up to 6 months.

The Commission [insists](#) that the crisis and force majeure proposal will give a solid response to needs on the ground while also catering to different situations. Despite this, it has received [criticism](#), not least because of the narrow personal scope of immediate protection as compared to temporary protection, and because immediate protection, unlike temporary protection, would have a 1-year duration, without the possibility of extension.

Advisory committees

The European Committee of the Regions (CoR) issued its [opinion](#) in May 2021, recalling, first of all, that successful crisis management begins at the local and the regional levels. Coordination with local and regional authorities should therefore be a priority. The CoR proposed that in crisis situations, immediate protection should be granted, at Member States' discretion, not only to refugees from armed conflict but also to other vulnerable groups, in particular children and victims of torture and trauma as well as victims of human trafficking, signs of which are not always visibly identifiable.

The European Economic and Social Committee (EESC) issued its optional [opinion](#) on the proposal for an asylum and migration management regulation and the proposal for a crisis and force majeure regulation in April 2021. The Committee welcomes the fact that both proposals have the legal status of a regulation, which is binding in its entirety and directly applicable in the Member States under the Treaties. However, the EESC points out that in order to benefit from 'a fully fledged policy', the proposed regulations in this field must be adopted all at once. As regards the principles of solidarity and fair sharing of responsibility, the EESC is of the opinion that the burden is 'not sufficiently balanced by a corresponding degree of solidarity'. More specifically, the Committee believes that solidarity needs to be binding, not voluntary, and should take the form of mandatory relocations. The EESC expresses a 'dual concern' both as regards the safety of 'people who seek international protection or a better life' and the Member States located at the EU's external borders, which are faced with migratory pressures exceeding their capacities.

National parliaments

The deadline for the submission of [reasoned opinions](#) on grounds of subsidiarity by national parliaments was 11 January 2021. The [Hungarian parliament](#) adopted a reasoned opinion on 21 December 2020. It noted that Member States' competences are restricted because the solidarity contribution, calculated on the basis of an artificial distribution key, is partly limited to the forms of relocation and return sponsorship. It further noted that the migration pact does not take into account Member States' national identities or constitutional traditions and that the geographic, economic and demographic conditions of the Member States are given less recognition, adding that the migration pact also limits Member States' competences concerning decisions on asylum procedures and residence permits.

Stakeholder views¹

During the preliminary consultations on the new pact on migration and asylum, many Member States and stakeholders stressed the need for a well-managed migration system, including the principle that in times of crisis caused by a mass influx of persons into the territory of a Member State, relocation should be the default solidarity measure. Applying this measure would not only quickly ease off the pressure on that Member State, while also taking into account the lessons learned from the coronavirus pandemic, but would also ensure that the legislative framework can deal with future situations of force majeure.

Stakeholders such as the European Council of Refugees and Exiles ([ECRE](#)) recommend that for the negotiations on the pact, the co-legislators should limit the Member States' possibilities to derogate from their responsibilities to register asylum applications or process asylum claims. This would help to avoid creating incentives for Member States to operate in crisis mode and to lower the asylum standards they apply.

The [Meijers Committee](#) (standing committee of experts on international immigration, refugee and criminal law) from the Netherlands is concerned that applicable border procedures, even in a 'normal' situation, do not give applicants sufficient time to substantiate their applications, overburden status-determination authorities and, consequently, violate the principle of *non-*

refoulement. They also note with concern that the asylum border procedure applicable to abusive asylum claims or to cases where an applicant poses a threat to security or is unlikely to be in need of international protection due to his or her nationality's recognition rate, should not be extended to the border procedure applicable to the vast majority of asylum applicants in situations of crisis. The Committee is also worried about asylum-seekers being deprived of basic fundamental rights as a result of the extended time limits provided for under the proposal (e.g. the deadline for Member States to register asylum applications or the extension of the deadline for implementing a Dublin transfer to another Member State in force majeure situations). Finally, the Committee expresses concerns about the lack of a more specific definition of 'crisis'. It also points to the need to establish a proper procedure for situations of crisis, because unlike the Temporary Protection Directive, the proposal may lead to serious restrictions on asylum-seekers' fundamental rights. In this context, it finds that the determination of crisis situations should be subject to democratic control by the European Parliament. The Meijers Committee recommends making the assessment of situations of force majeure by individual Member States dependant on the approval of the European Commission in order to avoid risks of abuse and widely differing interpretations within the Union.

Addressing the conclusions of the [Justice and Home Affairs Council](#) of 4-5 December 2023 and reacting to the Spanish Presidency's declaration that it would seek to finalise all key legislative files of the migration and asylum pact during trilogue negotiations on 7 December 2023, [19 human rights organisations](#) across Europe, including Amnesty International, Border Violence Monitoring Network, EuroMed Rights, Jesuit Refugee Service Europe, Platform for International Cooperation on Undocumented Migrants, and Save the Children, warn against 'rushing through' complex decisions, as it could have huge consequences. They point to several worrying issues in the migration and asylum pact, among them the mandatory use of asylum border procedures. This, they find, leads to de facto detention with limited access to legal assistance. The organisations are critical of the proposed crisis and force majeure regulation, seeing it as a way for Member States to lower the standards of the right to asylum even further 'in an unacceptably broad and vague range of so-called "crisis" situations'.

Legislative process

The Commission's legislative proposal ([COM\(2020\) 613](#)) was adopted on 23 September 2020 and falls under the ordinary legislative procedure (2020/0277(COD)). Trilogue negotiations in November and December 2023 led to a provisional agreement on 20 December 2023. The provisional agreement will be followed by technical meetings in January and will then have to be endorsed by the parliamentary committee and then by the Member States before formal adoption.

European Parliament

In the European Parliament, the proposal was assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE), with Juan Fernando López Aguilar – S&D, Spain) appointed as rapporteur on 9 November 2020. In his draft report, presented to the LIBE committee on 30 November 2021, the rapporteur insisted on the need for the co-legislators to stay as close as possible to the provisions of the Temporary Protection Directive, which the proposed crisis and force majeure regulation would repeal, and for maintaining solidarity among the Member States as a rule instead of an exception. The LIBE committee adopted the final [report](#) on 5 April 2023.

The Parliament underlined that the regulation should provide for '**specific temporary rules allowing derogations** from the general framework in crisis situations in the field of asylum and migration in the EU. The objective would be to relieve the pressure on Member States facing a crisis situation, by ensuring the fair sharing of responsibility and a swift support from other Member States 'through a **fast, fair, and efficient mandatory relocation mechanism**'.

The Commission, upon consultation with the affected Member State and relevant EU agencies, would **confirm the existence of a crisis situation**. On the basis of different indicators, such as the

geopolitical situation in third countries linked to migratory movements, the Commission would decide what type of support is appropriate. The available support measures would include capacity-building but also mandatory relocations.

A new **EU relocation coordinator** would be appointed to coordinate all relocation efforts, prioritising the relocation of vulnerable persons (in particular unaccompanied minors) and beneficiaries of prima facie international protection. In cooperation with the Commission and the European Union Agency for Asylum (EUAA), the coordinator would verify if the persons eligible for relocation have any meaningful links with the Member States of relocation. In a crisis situation, the coordinator, aided by sufficient staff, would present a bulletin every 2 weeks on the state of implementation of the relocation mechanism.

The Parliament recommends **allocating funding** to local and regional authorities and organisations for supporting integration following relocation. A Member State in crisis may receive emergency funding, including for the construction, maintenance and renovation of reception facilities, and should provide for additional and sufficient human and material resources, in line with the standards set out in the Reception Conditions Directive.

The report proposes that a Member State should receive an additional €10 000 for each applicant for international protection or beneficiary of international protection relocated from another Member State. The amounts should be increased to €12 000 for each relocated unaccompanied minor. In addition, the Member State covering the cost of transfers should receive a contribution of €500 for each applicant for international protection or beneficiary of international protection transferred to another Member State.

Members insisted that **vulnerable applicants, minors and their family members** should always be **excluded from the asylum crisis management border procedure**. The best interests of the child and family life should be considered at all stages of the procedure. Prima facie protection should be granted to persons from specific countries of origin.

Asylum staff, medical staff, legal representatives, non-governmental organisations, and Union institutions and agencies should always be allowed to access border procedure facilities.

Regarding the length of procedures, the Parliament asks to extend the border asylum and return procedures by an additional four weeks (in addition to 12 weeks).

Council

The Council's Asylum Working Party started looking at the proposal on 20 December 2022. An [opinion](#) of the Council Legal Service of February 2021 put into question the structure of the new pact on migration and asylum. The Commission, in its [communication](#) from 12 January 2023, invited the Parliament and Council to examine the crisis and force majeure proposal alongside the proposed regulation to address situations of instrumentalisation in the field of migration, as both 'would end the need to resort to ad hoc measures'.

On 20 September 2023, the Members of the European Parliament's Asylum Contact Group met with representatives of the Spanish Presidency and of the four presidencies having signed the 2022 [joint roadmap](#) that set out their commitment to make all possible efforts towards the adoption of the legislative proposals before the end of the 2019-2024 legislative period. After noting that the presidency's efforts to help the Council achieve a negotiating mandate on the crisis and force majeure regulation were not yielding any results, the Parliament announced that it was putting interinstitutional talks on the Eurodac and Screening regulations on hold until the adoption of the mandate.

On 4 October 2023, at a meeting of the Council's Permanent Representatives Committee, the Member States agreed on their negotiating [mandate](#) on a regulation on situations of crisis, including instrumentalisation of migrants, and force majeure in the field of migration and asylum. This position will form the basis of negotiations between the Council presidency and the Parliament.

In its negotiating mandate, the Council specifies that the proposed regulation should provide Member States facing a situation of crisis, **including instrumentalisation**, or **force majeure**, with the necessary measures to address these situations. These measures should, among other things, include solidarity among the Member States, expressed through an attitude of fairness towards the third-country nationals and stateless persons involved and through full compliance with their fundamental rights.

In a situation of crisis or force majeure, Member States wish to retain the option to apply specific rules for the asylum and return procedures. They therefore insist that, among other measures, **registration of applications** for international protection would be completed within an extended period of 4 weeks after they are made, as a way to ease the burden on overstrained national administrations.

A Member State that is facing a crisis situation may request **solidarity contributions** from other EU countries. These contributions can take the form of:

- the **relocation** of asylum-seekers or beneficiaries of international protection from the Member State in a crisis situation to other Member States;
- **responsibility offsets**, where other Member States, could, for instance, take on the responsibility to examine asylum applications to ease the pressure on the Member State facing a crisis situation;
- **financial contributions** or alternative solidarity measures.

These exceptional measures and solidarity support require authorisation from the Council in accordance with the principles of necessity and proportionality and in full compliance with the fundamental rights of third-country nationals and stateless persons.

Outcome of the provisional agreement of 20 December 2023

The co-legislators [agreed](#) that for situations such as the massive influx of irregular arrivals in 2015 or the millions of refugees fleeing Ukraine in 2022, the countries of first entry will have longer deadlines for registering files, of up to 4 weeks. This also means that access to rights can be delayed. The other Member States will also have to make mandatory commitments in the form of relocations or alternative aid measures. The definition of instrumentalisation will encompass third countries and all hostile non-state actors seeking to destabilise the EU.

EP SUPPORTING ANALYSIS

Radjenovic A., [Reforming asylum and migration management](#), EPRS, European Parliament, November 2023.

Dumbrava C., Luyten K. and Orav A., [EU pact on migration and asylum – State of play](#), EPRS, European Parliament, June 2023.

Del Monte, M, Orav, A., [Solidarity in EU asylum policy](#), EPRS, European Parliament, January 2023.

Dumbrava C., [Screening of third-country nationals at the EU's external borders](#), EPRS, European Parliament, 2020.

OTHER SOURCES

[Addressing situations of crisis and force majeure in the field of migration and asylum](#), European Parliament, Legislative Observatory (OEIL).

Commission Staff Working Document Accompanying the document 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], [SWD/2020/207](#).

ENDNOTES

- ¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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