

EU pact on migration and asylum

State of play

SUMMARY

In 2016, with unprecedented numbers of irregular migrants and asylum-seekers arriving in the EU, the European Commission proposed a package of reforms to the common European asylum system (CEAS). In June 2018, a broad provisional agreement was reached between the European Parliament and the presidency of the Council of the EU on several of the reform proposals. However, the agreement did not get the necessary support from the Member States. The reform stalled owing to persistent disagreements among the Member States on how to apply the principle of solidarity in practice and share their responsibilities in the area of asylum in a fair manner.

In September 2020, the Commission sought to revive the reform by putting forward a new pact on migration and asylum, offering a comprehensive approach aimed at strengthening and integrating key EU policies on migration, asylum and border management. The pact builds on and amends the previous reform proposals.

In line with the gradual approach proposed by the French Presidency of the Council in June 2022, the Member States reached agreement on several aspects of the reform relating to the screening and registration of migrants arriving at the EU's external borders. Following an agreement in the Council in June 2023 on two key proposals, the negotiations between the Parliament and the Council resumed, leading to a political agreement on the major reform files in December 2023.

On 8 February 2024, the Permanent Representatives to the European Union of the governments of the Member States (Coreper) approved the provisional agreement. The files now have to be formally adopted by the Parliament and the Council. It is expected that the reform will be finalised before the 2024 European elections, as previously agreed by the co-legislators.

This is a further update of a briefing originally published in December 2022.



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Members' Research Service

PE 739.247 – February 2024



Introduction

According to the Treaty on the Functioning of the EU (TFEU), the EU 'shall ensure the absence of internal border controls for persons' and shall 'frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals' ([Article 67\(2\)](#) TFEU). It 'shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement' ([Article 78\(1\)](#) TFEU). EU policies in this area 'shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States' ([Article 80](#) TFEU).

The [Common European Asylum System](#) (CEAS) developed gradually, starting with the establishment of minimum protection standards (1999-2005), and then continuing with the establishment of a system of common and uniform standards for protection (2008-2013). As revealed by the 2015 crisis, when the EU experienced an unprecedentedly high number of arrivals of refugees and irregular migrants, the existing asylum policies were unable to ensure a uniform treatment of asylum-seekers across the EU. Despite common standards, national asylum legislation differs in terms of the types of procedures they use, their recognition rates for asylum applications, and the protection status they grant. The existing system also struggles to implement the principle of solidarity and fair sharing of responsibility among Member States.

To address these shortcomings, the Commission presented a [CEAS reform package](#) in 2016, aimed at adjusting the [criteria](#) for determining the Member State responsible for examining an application for international protection (laid out in the Dublin Regulation); clarify and shorten [asylum procedures](#); achieve [greater convergence](#) of recognition rates and different forms of protection; revise the standards for the [reception of applicants](#) for international protection; revise the [Eurodac asylum fingerprint database](#); establish a fully fledged [EU Agency for Asylum](#); and establish a [Union Resettlement Framework](#).

In June 2018, the European Parliament and the Council presidency reached a broad [provisional agreement](#) on five proposals (on reception conditions, qualifications for international protection, Eurodac, the asylum agency, and the resettlement framework), but that agreement did not secure the necessary support from the Member States. For its part, the Council failed to reach a common position on the reform of the Dublin and the Asylum Procedures Regulations. The 2021 [Regulation](#) on the EU Agency for Asylum (EUAA) is so far the only CEAS reform proposal adopted into law. In September 2020, the Commission presented a new [pact on migration and asylum](#) that brought together policies in the areas of migration, asylum, integration and border management in a comprehensive manner. The pact amends two existing legislative proposals (on a [revised asylum procedures regulation](#) and on a [revised Eurodac regulation](#)) and introduces three new ones (a [regulation on screening](#) third-country nationals at the external borders, an [asylum and migration management regulation](#), and a [crisis and force majeure regulation](#)). These were accompanied by Commission recommendations on a new [migration preparedness and crisis blueprint](#), [legal pathways to protection in the EU](#), [search and rescue operations by private vessels](#), as well as by a Commission [guidance](#) on the Facilitators Directive.

As announced in the [roadmap](#) accompanying the pact, the Commission later presented new action plans/strategies on [integration and inclusion](#) (2020); [voluntary return and reintegration](#) (2021); the [Schengen area](#) (2021); [migrant smuggling](#) (2021); and [skills and talent](#) (2022). In line with the new Schengen strategy, the Commission presented a [proposal](#) on the revision of the Schengen Borders Code in 2021. It also put forward a [proposal](#) to ensure that the Schengen area can cope with the challenge of the instrumentalisation of migrants at the EU's external borders. Moreover, in March 2023, the Commission presented a recommendation on the [mutual recognition of return decisions and expediting returns](#).

Background

After reaching about 1.3 million in 2015, the total number of **applications for international protection** in the EU+ area (EU-27, Norway, and Switzerland) dropped by half in 2017 (see Figure 1). Having decreased in 2020 due to the coronavirus pandemic, these numbers grew again in 2021. In 2023, the EU+ countries received more than 1.1 million asylum applications (from first time applicants) – the highest number since 2016. More than [1 million](#) asylum cases were pending at all instances in the EU+ at the end of 2023.

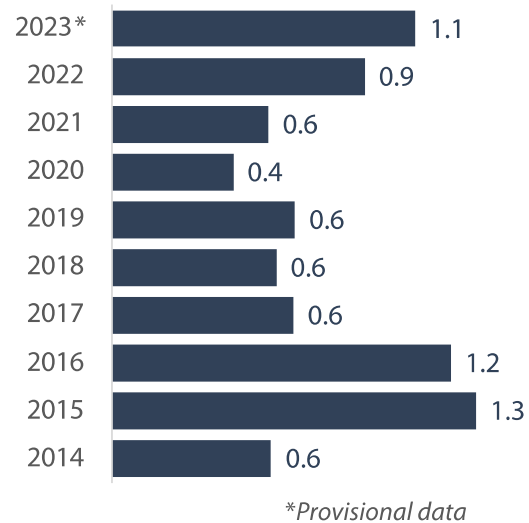
Following **Russia's invasion of Ukraine** in February 2022, the EU – for the first time ever – [activated](#) the [Temporary Protection Directive](#) to grant immediate [temporary protection](#) in the EU to people fleeing the war. By November 2023, about 4.3 million people from Ukraine were [registered](#) as beneficiaries of temporary protection in the EU.

After a relative decrease in the number of people trying to **cross the EU external borders irregularly** in recent years, this trend has been reversed since 2021 (see Figure 2). According to [Frontex](#), around 380 000 irregular entries were detected at the EU's external borders in 2023. This number represents an increase of 17 % compared with 2022 and is the highest since 2016. The Central Mediterranean and the Western Balkan routes were the most active migratory routes into the EU in 2023 – accounting for two thirds of all detected irregular entries.

The Belarusian regime's attempt to **instrumentalise migrants** for political purposes triggered a spike in irregular migration at the EU's eastern land borders. Some 8 184 illegal border-crossings were detected along this route in 2021, which was a more than tenfold increase in comparison to 2020. As a result of this [hybrid attack](#) against the EU, thousands of people were [trapped](#) at its borders and at least [21 died](#). According to [Frontex](#), 5 608 detections of irregular border crossings were recorded at the eastern land border in 2023.

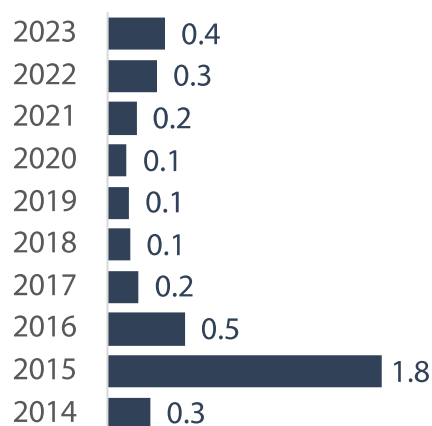
The strength of EU border and migration policies relies on the **effective return** of third-country nationals who do not have the right to stay in the EU. According to [Eurostat](#) data, around 400 000 third-country nationals are ordered to leave the EU annually. However, of the 3.8 million people ordered to leave from 2013 to 2022, only about 1.3 million people – less than a third – [actually returned](#).

Figure 1 – Applications for international protection in the EU+ area (in millions)



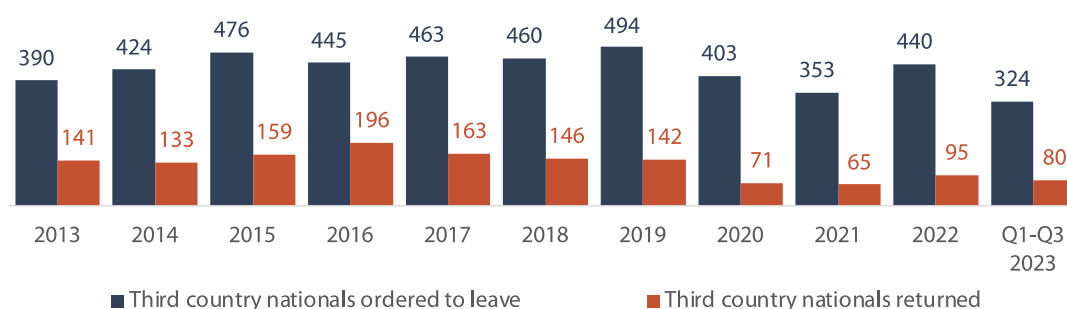
Data sources: [Eurostat](#)

Figure 2 – Detection of irregular crossings of the EU external borders (in millions)



Data source: [Frontex](#).

Figure 3 – Return decisions and effective returns (in thousands)



Data sources: [Eurostat](#).

State of the reform

After the 2019 European elections, the CEAS reform proposals were carried over to the new Parliament, which reconfirmed rapporteurs or assigned new ones for each of the legislative files. The reform of the EU asylum system was relaunched in 2020 with the publication of the Commission's new pact on migration and asylum.

Figure 4 – Reform of the EU's asylum and migration system: Overview of proposals

	Commission's proposal	Parliament's report	Council's mandate	Negotiations (trilogues)	Adopted legislation
New	Schengen borders code (2021)	September 2023	June 2022	Provisional agreement (Feb 2024)	
	Migrant instrumentalisation (2021)	Under discussion	Under discussion		
Migration pact	Migration management (2020)	March 2023	June 2023	Provisional agreement (Dec 2023)	
	Asylum procedure (amended 2020)	March 2023	June 2023	Provisional agreement (Dec 2023)	
	Border screening (2020)	April 2023	June 2023	Provisional agreement (Dec 2023)	
	Crisis and force majeure (2020)	March 2023	October 2023	Provisional agreement (Dec 2023)	
	Eurodac (amended 2020)	December 2022 (update)	June 2022	Provisional agreement (Dec 2023)	
CEAS reform	EU asylum agency (2018)	Nov 2021	June 2021	Completed	December 2021
	Asylum qualification (2016)	June 2017	December 2022 (amended)	Provisional agreement (June 2018)	
	Reception conditions (2016)	May 2017	December 2022 (amended)	Provisional agreement (June 2018)	
	Union resettlement (2016)	June 2017	December 2022 (amended)	Provisional agreement (June 2018)	
	Return directive recast (2018)	Draft (Feb 2021)	Partial mandate (June 2019)		

Source: Compiled by the authors.

By June 2023, the European Parliament had adopted reports on most of the reform proposals – although the draft report on the proposal on instrumentalisation of migration is still being discussed. In line with the [gradual approach](#) proposed by the French Presidency of the Council in 2022, the Member States focused on reform aspects related to the screening and registration of migrants arriving at the border. In June 2022, the Council adopted a [negotiating mandate](#) on the proposed screening regulation and the recast Eurodac Regulation, as well as a general approach on the revision of the Schengen Borders Code. Eighteen Member States (as well as Norway, Switzerland and Liechtenstein) endorsed a political Solidarity Declaration establishing a temporary solidarity mechanism intended to provide a concrete response to the migratory difficulties faced by the Member States of first entry. Based on the 2018 provisional agreement, in December 2022, the Council amended its negotiating mandates for three proposals from the CEAS package: a regulation establishing a Union Resettlement Framework, a regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, and the

recast of the directive laying down standards for the reception of applicants for international protection.

Following an [agreement](#) in the Council in June 2023 on two key proposals, the negotiations between the Parliament and the Council resumed, leading to a political agreement on five major reform files in December 2023. On 8 February 2024, the Permanent Representatives of the Governments of the Member States to the European Union (Coreper) [approved](#) the agreement. The files will now have to be formally adopted by the Parliament and the Council. It is expected that the reform will be finalised before the 2024 European elections, as previously [agreed](#) by the co-legislators.

Key proposals

Asylum and migration management

The Commission's [proposal](#) on the asylum and migration management regulation aims to replace the current Dublin rules with a common framework for asylum and migration management based on the principles of integrated policymaking. To ensure the sharing of responsibility on a continued basis, the proposal establishes a new solidarity mechanism in which Member States could participate in different ways (relocation of applicants, return sponsorships or other contributions). It also provides for a specific process to deal with people disembarked following search and rescue operations. The proposal aims to enhance the system's capacity to determine the Member State responsible for examining an application by adjusting the existing criteria while maintaining the key criterion of the first country of entry. It also addresses the issues of abusive applications and unauthorised movements of the applicants within the EU, by allowing the withholding of certain material benefits in case of non-compliance.

In the Council, the third technical reading of the proposal was finalised in the Asylum Working Party in 2021. In October 2022, the Czech Presidency drafted a new proposal for a permanent solidarity mechanism that was discussed at the Justice and Home Affairs (JHA) Counsellors' meeting. The Swedish Presidency presented a new compromise version of the Asylum and Migration Management Regulation in February 2023. Among other elements, this document specifies the modalities of the annual migration management cycle which organises the forecasting of Member States' solidarity commitments and defines the responses adapted to the situations encountered by the Member States, according to the degree of pressure. It also specifies the modalities of the annual European Migration Forum, which will be responsible for taking stock of the commitments made by the Member States and the needs identified. The compromise text reintroduces the notion of relocation for the purpose of return, which was the objective of the concept of return sponsorships. On 8 June 2023, the Council reached an [agreement](#) on the asylum and migration management regulation. Each country would be responsible for a set number of people, but would not necessarily have to take them in. Countries unwilling to receive irregular migrants and refugees arriving to the EU would be able to contribute financially (€20 000 per applicant) or through capacity-building (staff, equipment).

In the Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE) rapporteur Tomas Tobé (EPP, Sweden) presented his [draft report](#) in October 2021. While under the previous legislative term Parliament insisted on mandatory relocation, the rapporteur was now open to other mechanisms that would allow a political solution and 'impactful solidarity', where all Member States contribute. After the LIBE committee's approval of the [report](#) on 20 April 2023, the Parliament adopted its negotiating mandate.

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On 20 December 2023, the Parliament and the Council reached a [provisional agreement](#) on the asylum and migration management regulation. The agreement confirmed the adjustment of the Dublin criteria and the establishment of a solidarity mechanism for the benefit of Member States under migratory pressure, including specific solidarity measures for people rescued at sea. All Member States will need to contribute, on an annual basis, to an EU solidarity pool with either relocations (transfers of applicants or beneficiaries of international protection), or financial contributions (based on the size of the population and gross domestic product). Following the provisional agreement, work continued at technical level to flesh out the details of the new regulation.

Common asylum procedure

In 2016, the Commission put forward a legislative proposal to replace the Asylum Procedure Directive with a regulation. The proposal sought to establish a harmonised common EU procedure for international protection to reduce differences in recognition rates between Member States, discourage secondary movements and ensure the same procedural guarantees across the EU. In 2020, as part of the new pact on migration and asylum, the Commission presented a [revised proposal](#) for a common asylum procedure regulation. The new text keeps the overall objectives of the 2016 proposal but makes targeted changes to the most contested issues such as the border (accelerated) procedure and returns. In the recast proposal, the Commission clarifies the scope for the use of the border procedure, specifying that it would only apply to applicants who have not yet been authorised to enter the territory of a Member State and do not meet the entry criteria set out in the Schengen Borders Code. The border procedure could also be used in cases of irregular arrivals at the EU external border or following a disembarkation, but only when one of the following three conditions apply: when persons pose a risk to national security or public order; when persons make use of false documents; or when persons come from a third country that has an asylum recognition rate below 20 %. The border procedure should last up to 12 weeks (20 weeks in times of crisis). Those who do not qualify for protection would be promptly returned, as a means of closing existing procedural loopholes.

In the Council, despite general support for the amended proposal, Member States expressed important reservations, including about the treatment of applicants with special needs (unaccompanied minors, people in urgent need of medical examination, etc.). Some Member States have been concerned that certain provisions aimed at limiting secondary movements do not strike the right balance between fighting abuse and ensuring protection when needed. The biggest issues for most Member States have been Article 41 on the border procedure and the definition of the term 'final decision', and Article 4 on granting refugee status or subsidiary protection status. In the Council, a partial Coreper mandate was approved in December 2022. On 8 June 2023, interior ministers from the 27 EU Member States reached an [agreement](#) on the asylum procedure regulation, including on the expedited border procedure for migrants unlikely to qualify for asylum.

The LIBE rapporteur Laura Ferrara (then EFDD, Italy) presented a [draft report](#) on the proposal in May 2017, which was [adopted](#) in the committee on 25 April 2018, with 36 votes in favour, 12 votes against and 8 abstentions. As work on this file could not be finished before the end of the previous Parliament mandate in 2019, work on the amended proposal resumed in November 2020, with Fabienne Keller (Renew, France) appointed rapporteur. She presented an updated [draft report](#) to the LIBE committee in October 2021. After the Parliament updated its negotiating mandate on the proposal, the LIBE committee voted to enter into interinstitutional negotiations in April 2023.

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The [provisional agreement](#) on the common asylum procedure proposal of 20 December 2023 sets out a faster asylum procedure, setting the limit of six months for a first decision and an even shorter

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deadline for manifestly unfounded or inadmissible claims. A more generalised use would be made of the border procedure immediately after the pre-entry screening. The border procedure would be applied to people who are considered a danger to national security or public order, to applicants misleading the authorities by presenting false identity or nationality information, as well as to applicants from countries with asylum recognition rates below 20 %. The adequate capacity at EU level for carrying out the border procedures will be 30 000 reception places, which are to be increased gradually over three years. Each country will have an annual cap on applications examined under the border procedure and when this maximum number is reached, the applicants will be directed into the ordinary asylum procedure.

Screening of third-country nationals at EU external borders

The Commission's [proposal](#) aims to establish a pre-entry screening procedure applicable to third-country nationals who are apprehended crossing the EU external borders irregularly, are disembarked following a [search and rescue](#) operation, or apply for international protection at external border crossing points or in transit zones and do not fulfil the entry conditions. The screening, which would last up to five days, would involve a preliminary health check, a vulnerability check, an identity check and a security check, as well as fingerprinting and registration in the Eurodac database. After having passed this screening, people would be directed to the appropriate procedure (asylum or return). Member States should establish an independent monitoring mechanism to ensure the protection of the fundamental rights.

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While the proposal received general support at the Council (under the [German Presidency](#)), concerns remained about the effective implementation of screening and its consistency with other border procedures. Discussions at technical and political levels continued during the [Portuguese](#) and [Slovenian](#) Presidencies. The proposal was included in the first step of the [gradual approach](#) proposed by the French Presidency. In June 2022, the Council adopted a [negotiating mandate](#) based on a compromise seeking to clarify aspects of the proposal and to provide more flexibility for the Member States regarding, for example, the location of screening and the obligation to carry out health checks. The text removes references to the other proposals in the pact to make it easier to dissociate the proposal from the package. Based on the agreed mandate, the [Czech Presidency](#) was endorsed to start negotiations with the Parliament.

In the Parliament, the rapporteur for the LIBE committee, Birgit Sippel (S&D, Germany), put forward a [draft report](#) on 16 November 2021. The rapporteur proposed changes to ensure that applicants for international protection have the right to enter and remain on the territory of the Member States while their applications are being examined. She opposed the inclusion of third-country nationals found in the territory of the Member States within the scope of the regulation, arguing that this is not covered by [Article 77\(2\)\(b\)](#) TFEU (this stance was supported by the EPRS [substitute impact assessment](#)). The LIBE rapporteur proposed amendments aimed at creating an efficient, speedy procedure, which fully respects fundamental rights and ensures legal certainty, and strengthens the fundamental rights monitoring mechanism. She rejected the proposal to apply screening to third-country nationals found within the territory where there is no indication that they have crossed an external border in an unauthorised manner. She also opposed obliging the Member States to conduct screening at or in proximity to the external borders. The rapporteur proposed to make health and vulnerability checks mandatory elements of screening and introduced amendments to strengthen the fundamental rights mechanism through an obligation to involve non-governmental institutions and organisations. The Parliament [endorsed](#) the rapporteur's draft in April 2023, enabling the opening of interinstitutional negotiations.

The Parliament and the Council reached a [provisional agreement](#) on the proposal in December 2023. According to the agreement, the screening procedure will be carried out at any adequate location designated by each EU country and situated, in principle, at or in proximity to the external borders. The Parliament secured strong provisions on the respect of the best interests of the child, in particular unaccompanied minors, during the procedure, and for the establishment of national independent monitoring mechanisms to protect fundamental rights of people undergoing screening.

Crisis and force majeure

The Commission's [proposal](#) aims to create a new legislative instrument to provide for temporary and extraordinary measures in situations of crisis or force majeure in the field of migration and asylum. According to the proposal, a situation of crisis involves a mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations. A force majeure situation refers to where it is impossible for a

Member State to apply the registration deadline for applications for international protection (e.g. during a pandemic). The new regulation would allow Member States to derogate from certain asylum and return obligations, as well as to adjust their solidarity contributions.

The examination of the provisions of the proposal in the Council's Asylum Working Party started on 20 December 2022 and is ongoing. In February 2021, the Council's Legal Service issued an [opinion](#) on the proposal that put into question the structure of the new pact on migration and asylum, including the ambiguous legal framework of the proposed crisis and force majeure regulation, which falls between the Schengen *acquis* and that for asylum. Under the [German Presidency](#), there was broad support for a mechanism of mandatory solidarity in crisis situations and in cases of migratory pressure. The Czech Presidency [proposed](#) the inclusion of a Solidarity Response Plan in the regulation, indicating specific solidarity and responsibility measures for crisis situations, and the Swedish Presidency [proposed](#) a Permanent EU Migration Toolbox. The latter introduced the concept of 'adaptable responsibility based on derogations foreseen in the Union *acquis*' providing Member States with the necessary tools to react to specific migratory challenges, including those envisaged in the crisis and force majeure regulation as well as in the instrumentalisation regulation.

In the Parliament, the rapporteur for the LIBE committee, Juan Fernando López Aguilar (S&D, Spain), presented his [draft report](#) in November 2021. The rapporteur insisted on the need 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 to have solidarity between Member States as a rule instead of an exception. He proposed a new mandatory relocation framework to share responsibility for asylum-seekers, holders of international protection and beneficiaries of *prima facie* recognition on the basis of an allocation key (GDP, size of population and employment rate). This solidarity mechanism could also be triggered in case of a crisis in the field of migration and asylum, including a crisis of a force majeure nature. The report was [adopted](#) in the Committee in March 2023. On 20 April 2023, the Parliament endorsed the Committee's decision to enter into interinstitutional negotiations on the proposal. These negotiations have not yet started because the Council has not yet adopted its general approach.

In its [communication](#) of 12 January 2023 on the report on migration and asylum, the Commission 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 and asylum, as both 'would end the need to resort to ad hoc measures'.

According to the [political agreement](#) between the co-legislators, special rules would apply to crisis situations (including instrumentalisation) and a dedicated solidarity mechanism would be

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established to support Member States in cases of exceptional influx of third-country nationals leading to the collapse of national asylum systems. At the request of the Member State affected, the Commission would assess the situation and adopt a decision establishing a crisis. The Commission would then propose solidarity measures and derogations to the Council, together with a recommendation on categories of persons who should be entitled to *prima facie* protection. The special solidarity contributions include relocation, targeted financial contributions or alternative measures. Crisis situations can also trigger temporary derogations from the standard asylum procedures, including longer deadlines for registration (up to 10 days) as well as asylum and return border procedures (6 weeks in addition to the 12-week limit). More use will be made of the asylum border procedure: in situations of mass influx, the threshold for the border procedure will apply to applicants with up to 50 % recognition rate, whereas the border procedure would be applied to all arrivals in situations of instrumentalisation of migrants.

Instrumentalisation of migration

The Commission's [proposal](#) would introduce a mechanism allowing Member States to derogate from the asylum *acquis* in situations of instrumentalisation of migration (defined in the proposal on the revision of the SBC). It was initiated in response to the state-sponsored instrumentalisation of migrants from Belarus, a new form of hybrid attack on the EU, by which the Belarus regime used the facilitation of irregular migration as a

tool for political purposes in 2021. The proposal allows extension of the registration periods for asylum applications, application of the border procedure to all asylum claims, limitation of reception conditions to meet basic needs alone, and expediting of return procedures. The Commission aims to set out a framework to deal with emergency situations without having to resort to ad hoc measures under [Article 78\(3\) TFEU](#), as it did with the 2021 [proposal](#) for a Council decision on provisional emergency measures to the benefit of Latvia, Lithuania and Poland.

In the Council, the first presentation of the proposal took place in March 2022 in the [Asylum Working Party](#) (AWP) under the French Presidency. In the [Czech Presidency](#) programme, the instrumentalisation of migration, the unacceptable actions of Belarus, and the possible repetition of this scenario, were among the priority topics to be dealt with in the area of JHA. But despite the willingness to reach an agreement before the end of the year, no common position was reached. Following a series of expert meetings and a number of compromise texts, the justice and home affairs ministers [assessed progress](#) on the file during their December 2022 meeting. They agreed that the latest compromise text was 'stable' and represented 'a finely balanced compromise reflecting the wide range of positions by Member States'. The text in question placed 'all references to other legislative instruments in square brackets (including Article 4 referring to the emergency return procedure due to its Schengen relevance and the issue of variable geometry), thus avoiding to pre-empt any future discussions on the respective files'. However, Coreper [did not approve](#) a partial general approach, and discussions continued during the Swedish Presidency.

The European Parliament has repeatedly criticised Belarus's government for its use of political repression, flawed parliamentary elections, attacks on media freedom and civil society, and failure to respect human rights. The crisis unfolding at the EU's external borders in the summer of 2021 led to [divided opinions](#) on the nature of the crisis, with some Members considering it a migration crisis and a hybrid attack on the EU, and others seeing it rather as a humanitarian crisis. In the Parliament, the proposal was referred to the LIBE committee, which appointed Patryk Jaki (ECR, Poland) as [rapporteur](#). His draft report has yet to be voted by the LIBE committee.

According to the [provisional agreement](#) reached by the co-legislators on the proposal for a crisis and force majeure regulation, situations of instrumentalisation of migrants will be covered by the

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mechanism established in that regulation. It is uncertain whether the proposal on instrumentalisation will be retained.

Revision of the Schengen Borders Code

In December 2021, the Commission presented a [proposal](#) to revise [Regulation \(EU\) 2016/399](#) (the Schengen Borders Code – SBC) as part of a broader strategy to strengthen the Schengen area. Together with provisions aimed at improving the functioning of the Schengen area, which has no controls at the internal borders (new coordination mechanism on checks at internal borders, updated safeguards), the proposal contains new provisions on the management of EU external borders. It establishes a new coordination mechanism allowing the Council to quickly adopt binding rules setting out temporary travel restrictions at the EU external borders in case of a threat to public health. The proposal includes a definition of situations of instrumentalisation of migrants at the EU external borders and the measures available at these borders in such situations (specific measures on asylum and return are provided for in a separate proposal). The Commission also proposed a new procedure to address unauthorised movements during joint police operations, including allowing Member States to revise existing or conclude new bilateral readmission agreements between themselves.

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In June 2022, the Council adopted its [general approach](#) on the proposal. The text seeks to clarify the concept of instrumentalisation by simplifying the definition and adding provisions about the actions that Member States may take when faced with such situations. It provides for more flexibility on the travel- and health-related restrictions that can be applied at the external borders. The Council also amended the procedure for transfers between Member States, by describing the police cooperation criterion in more detail and making it clear that using this procedure, which takes place in a bilateral cooperation framework, is voluntary.

In the Parliament, LIBE rapporteur Sylvie Guillaume (S&D, France) presented her [draft report](#) in November 2022. Within the proposal, the rapporteur deleted the provisions related to instrumentalisation of migrants, arguing that these have 'limited relevance for the rules governing the good functioning of the Schengen area' and that the issue is already dealt with in another proposal. The rapporteur proposed stricter time limits on the reintroduction of internal border controls and rejected the new procedure for internal Schengen returns, as these are 'not consistent with a legal basis that requires the absence of any controls on persons, whatever their nationality, when crossing internal borders'. She accepted the Commission's proposal for an EU mechanism to address public health emergencies at external borders, while insisting on a greater role for the European Parliament in this process. In September 2023, the LIBE committee adopted a decision to open interinstitutional negotiations, which was approved by the Parliament in October.

On 6 February 2024, the Parliament and the Council reached a provisional agreement on the proposal. The agreed text specifies clear time limits for the reintroduction of checks at internal EU borders and a reinforced scrutiny role for the Commission. The new transfer procedure for persons apprehended around internal borders is maintained, but will only apply in the framework of bilateral cooperation and for persons who do not apply for international protection. The provisions on instrumentalisation of migrants are also retained, including a list of specific border measures that the Member States can use to deal with such situations (i.e., temporary closure of specific crossing points and reduction of opening hours).

Eurodac

In 2016, the Commission proposed to review the Eurodac Regulation for fingerprinting migrants, with a view to enhancing the practical implementation of the Dublin system, facilitating returns and using the database to tackle irregular migration. The proposal extends the scope of the Eurodac Regulation to include the possibility for Member States to store and search data belonging to any third-country national found irregularly staying in the EU, not just data belonging to asylum-seekers. It would also allow Member States to store more personal data in Eurodac, such as names, dates of birth, nationalities, identity or travel documents, and facial images. The proposal allowed Member States to introduce sanctions, in accordance with their national law, for those individuals who refuse to comply with the fingerprinting procedure. It would be up to the Member State to decide the form of penalties or sanctions, as long as they do not breach the fundamental rights of the individual concerned. The use of detention or any form of coercion should only be used as a means of last resort.

In the Parliament, LIBE rapporteur, Monika Macovei (ECR, Romania), presented her [draft report](#) in February 2017. The draft report proposed extending the scope of the regulation to stateless persons in addition to third-country nationals, adding an option to make queries based on alphanumeric data, as well as simplifying and broadening Europol's access to the database. In June 2018, the Council and the Parliament reached a [partial agreement](#) on the 2016 proposal, which involved keeping the provisions that proposed to: store the facial images and alphanumeric data of asylum-seekers and irregular migrants in addition to their fingerprints; lower the age for fingerprints and facial images of minors from 14 to 6 years; allow Europol to query the database more efficiently; and register in the database persons falling under the Union or national resettlement schemes. As negotiations on the rest of the asylum package reached an impasse in 2019, the Eurodac proposal also stalled.

In September 2020, the Commission presented a [revised proposal](#) for the Eurodac Regulation. While keeping the overall objectives of the 2016 proposal, the amended version allows for better detection of irregular migration and unauthorised movements. It is also intended to support the implementation of the new solidarity mechanism and to allow for the use of Eurodac within the interoperability framework of the EU information systems for border management.

In the Parliament, Jorge Buxadé Villalba (ECR, Spain) was appointed as the new LIBE rapporteur for the amended proposal in October 2020. In March 2021, the rapporteur presented a [working document](#), with a procedural proposal for drafting an updated negotiating mandate of the Parliament. In June 2022, the Council adopted a new [mandate](#) for negotiations with the Parliament. On 12 December 2022, the LIBE committee endorsed an updated negotiating mandate on the Eurodac Regulation, which enabled the European Parliament and Council to start interinstitutional negotiations in March 2023.

According to the [provisional agreement](#) reached by the co-legislators in December 2023, the revised Eurodac regulation will allow for the storage of facial images, and alphanumeric information (name, surname, nationality and date and place of birth). The minimal age for collecting fingerprints will be lowered from 14 to 6 years. Authorities will be able to include information in the database on decisions concerning removal, return or relocation, as well as a security threat assessment (only if a person is violent or unlawfully armed, or where he/she has links to terrorism or a terrorist group or is involved in offences within the scope of the European arrest warrant). The database will also register persons disembarked in an EU Member State following a search and rescue operation. This information will be recorded separately and used for statistical purposes only.

Quick links

- [Legislative Observatory](#)
- [Legislative Train Schedule](#)
- [Commission proposal](#) (2020)
- [LIBE report](#) (2017); [statement](#) (2021)
- [Council's renewed mandate](#) (2022)
- [EPRS briefing](#) (2021)

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