



**Tithe an
Oireachtais**
Houses of the
Oireachtas

**An Comhchoiste um Dhlí
agus Ceart**
Teach Laighean
Baile Átha Cliath 2

**Joint Committee on
Justice**

Leinster House
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Minister for Justice,
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By e-mail to: EXMcHugh@justice.ie

Our Ref: JC/J100/8

RE: The Motion on Proposed approval by Dáil and Seanad Éireann of the proposal for Regulations and a Directive of the European Parliament and of the Council on international protection, asylum and migration

Dear Minister,

I am writing to you in relation to the Committee's consideration of the Motion on Proposed approval by Dáil and Seanad Éireann of the proposal for Regulations and a Directive of the European Parliament and of the Council on international protection, asylum and migration which took place recently.

Following your attendance at the Committee meeting on Tuesday, 23rd April 2024, the Committee also undertook a further stakeholder engagement on Tuesday, 30th April 2024 with the following individuals and organisations: NASC, David Leonard BL, The Irish Refugee Council; the Migrants Rights Centre Ireland, and the UNHCR representative in Ireland.

Both meetings provided an opportunity for Committee Members (and other Members who attended) to raise questions on this topic and to clarify a number of matters as part of its consideration of the motion.

Owing to the manner in which such motions are referred, it is not possible for the Committee to include observations in its message to the Houses following completion of its consideration. The usual pre-legislative process could not be utilised as this was a motion rather than a Bill. Therefore, in order to record and bring to your attention a number of points raised during the course of the meetings, the Committee agreed that, in addition to the standard message, this letter be drafted as an output to its consideration.

The Committee wishes to note the following points raised at hearings this matter:

(1) The Asylum Procedures Regulation (APR) [Border procedure]

1. The Committee notes points raised by witnesses during its engagement in relation to the border procedure under the Asylum Procedures Regulation (APR).
2. The Committee highlights concerns raised that the border procedure will lead to the detention of individuals, including the possibility that more vulnerable groups such as

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- families, unaccompanied minors, and victims of trauma or trafficking could also be subject to the border procedure and detained.
3. The importance of including age-disputed minors as a vulnerable group was raised in relation to the adequacy of age assessments.
 4. Other concerns included that those subject to these border procedures may have more limited access to legal rights and safeguards.
 5. The Committee heard that the rights of the child must be a paramount consideration and that minors should not be subject to detention under any circumstance.
 6. The Committee supports comments that vulnerable groups such as victims of trauma or trafficking should not be subject to detention and that detention should be a measure of last resort when it comes to implementing these measures at a national level.
 7. Concerns were shared regarding the potential of prolonged detention of individuals within closed facilities:
 - a. Particularly concerning in *crisis* situations where timelines are extended.
 - b. Risk exists in terms of sacrificing procedural guarantees and protections for deterrents and creating efficiency in processing.
 8. Restricted access to external supports and education for International Protection Applicants (IPAs) was noted as being problematic, and something that needs to be addressed meaningfully by the Department.
 9. Concerns were shared regarding the quality of vulnerability assessments which will be undertaken, potentially compromising the ability to identify vulnerable individuals in the system who require additional support.

(2) The Asylum Procedures Regulation (APR) [12-week deadline for completion of applications]:

1. The Committee notes comments in relation to the proposed 12-week timeline within which asylum applications, including appeals and final return decisions, must be completed under the Asylum Procedures Regulation and concerns that this timeline may be too tight to guarantee adequate protection, safeguards and access to legal representation for asylum seekers.
2. The Committee supports calls that adequate supports must be in place when these Regulations are implemented, to ensure that procedural rights of asylum seekers are upheld under this accelerated timeline, including an increase in the investments into staffing levels and an increase in the funding for legal aid.
3. Concerns were raised regarding the potential that APR will compromise integrity of the asylum system, infringing on the fundamental rights and freedoms of IPAs, and the system's ability to respond to their individual needs.
4. The proper functioning of the APR is based on assumptions that the majority of IPAs do not have protection needs and that assessing need can be done quickly.
5. Risk that the APR will adversely affect trauma-exposed individuals who may need sufficient time to build trust in order to disclose their experiences.
6. Concern regarding limited access to legal assistance and accessible information on rights and procedures, including insufficient timeframes in which to provide documentation such as legal/medical reports.
7. It was stressed that adequate facilities and support frameworks should be established prior to implementation of the regulations.
8. The Committee highlights the need for procedural and fundamental rights to be upheld throughout the process.
9. Regarding the use of accelerated procedure for nationals from countries with a low recognition, the Committee notes there is a risk of creating self-reinforcing cycle of rejection, and the likelihood of disproportionately negative outcomes for individuals from these countries.

10. The fair and effective functioning of the system requires national law standards of legal assistance and access to justice IPAs.
11. The Committee notes and welcomes views expressed by some witnesses that the EU Asylum and Migration Pact ('the Pact') does introduce "several key improvements in procedural fairness" such as the recording of original interviews and access for legal representatives to same. Sharing and translation of documents is also required under the new rules. It was suggested that this should lead to better quality decision making and therefore a reduction in the number of court challenges via judicial reviews.

(3) Asylum and Migration Management Regulation (AMMR):

1. The Committee notes points raised in relation to the 'solidarity mechanism' under the Asylum and Migration Management Regulation. It was highlighted that this mechanism is unlikely to achieve its stated goal as Member States can opt for financial contributions, exacerbating the disparities in asylum distribution. In addition:
 - a. The number of places committed to sharing resettlement responsibility has fallen.
 - b. Concerns were raised regarding richer countries being enabled to effectively offload their responsibility.
2. The AMMR requires a cohesive and sustainable implementation plan to ensure new system does not recycle existing challenges.

(4) Data collection and retention under the Eurodac Regulation:

1. The Committee notes the concerns expressed at some of the proposed measures under the Eurodac Regulation, including the gathering of fingerprints and facial images for its database and the potential impact this would have on an individual's right to privacy and civil liberties.
2. Concerns were raised around the potential for this database to facilitate mass surveillance of vulnerable individuals and around the implications of the significant level of data within the database being shared amongst police forces and Member States within the EU. In particular, concerns were expressed around provisions which allows recording of data for children aged 6 and over, which could include fingerprinting, travel documents, health information and facial images which can be retained for a period of 10 years.
3. Lack of harmonisation between EU database and National MS databases and potential for falsely labelling individuals as a posing security threat.
4. Lack of clarity provided in regulations regarding security flags.
5. Concerns raised regarding necessity and proportionality, and unintended long-term consequences of data collection under Eurodac.

(5) Queries around the impact on Ireland's sovereignty arising from a decision to opt into the Pact on Asylum and Migration:

1. The Committee notes questions raised in relation to the potential impact on Ireland's sovereignty arising from a decision to opt into the Pact, including assertions that this would limit Ireland's ability to decide its own immigration and asylum policies and that these decisions would be made instead at a European level.
2. The Committee notes the response from the Minister that under the Lisbon Treaty, it was agreed that Ireland has the right to choose to opt into any measures that relate to migration and security and therefore these proposals do not raise concerns relating to sovereignty.

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3. The Committee also notes that, according to the Minister, this view is reflected in the legal advice provided to the Minister in relation to this Pact. The Committee also notes the views expressed by some witnesses that this is already the case and has been since 2006 when the Qualification Directive came into force across the EU, which it was said has not caused any difficulty to date.

(6) Safe Country concepts:

1. Concerns regarding the use of safe country concept and the process of designating countries as safe
2. Potential implications for the examination of the applications for international protection, which:
 - a. May trigger the implementation of both accelerated and border procedures.
 - b. Provides a basis for inadmissibility.
3. Principle of non-refoulement must take precedence over a perceived connection or tie to that country.
4. May adversely affect unaccompanied minors, as availability of sustainable appropriate care and custodial arrangements must be considered.
5. Requires clear procedures and robust safeguards to allow for discretion on a case-by-case basis.
6. Significant concerns were raised by some contributors regarding what one described as EU's pursuit of 'illegal, immoral and inhumane migration control deals/external border management' with third countries.

(7) General Observations:

1. Concerns regarding circumstances for transit passengers, i.e. individuals passing through another country, to include:
 - a. Increased risk of refoulement in these instances
 - b. The need for clear guidelines, criteria and procedures for designating the first country of entry for the purposes of processing.
 - c. The need for clarification regarding whether transit passengers will be subject to accelerated or border procedures.
2. Reception conditions must be consistent with humanitarian law, regardless of secondary movements.
3. Potential implication of Crisis and Majeure Regulation and derogations
 - a. Extended periods to examine border procedure cases, prolonging time in detention.
4. Significant planning and investment are paramount to achieving a fair, efficient and sustainable system that upholds the dignity of asylum seekers and respects their fundamental rights.
5. Concerns regarding potential redeployment of Gardaí for border control, and the risk of ethnic profiling at the border.
6. Ethical and legal concerns regarding externalisation of EU borders
 - a. Outsourcing border control to non-EU countries with poor history of human rights compliance or fewer resources
 - b. Risk being complicit
7. Some stakeholders approved of the Pact overall but sought assurances that its implementation will contain sufficient safeguards to ensure "fair and fast asylum procedures" whilst upholding procedural fairness and sensitive management of vulnerable persons. It was said that the legal framework must be met by positive actions and that resources will play a key part in realising the goals of the pact.
8. The Committee expresses concerns at comments made during its engagements, that more than 80% of those who apply for asylum in Ireland are arriving from the UK via the

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land border with Northern Ireland. While this is a developing matter and having due regard to the human element of those in the asylum process, the Committee urges the Minister to ensure that Ireland's asylum system is robust, fair and that any potential issues relating to the arrival of migrants via the land border with Northern Ireland are appropriately addressed.

9. The Committee was presented with a single motion containing a suite of reforms to the migration and asylum system. This approach did not allow for consideration to be given to opting into individual elements within the Pact but rather presents the Pact as a single question being put to the Oireachtas for decision. This approach was raised in the course of the meetings and may be something which needs to be reviewed to ensure the Pact is correctly decided on.
10. The Committee noted concerns from some witnesses as to the position Ireland may be placed in should we adopt a different approach to the rest of the EU and potentially become an outlier. One witness likened this to a computer system upgrading its security software but leaving one node on the network running an old version which could create "a risk to Ireland's interests" and cause "paralysis in decision making".
11. It was stated that concerns are held by interest groups on both sides of the debate but that this does not necessarily mean the Pact is flawed. The Pact was described in testimony as "an imperfect consensus based on compromise".

While the above captures some high-level observations in relation to this Motion, further detail is provided in the transcripts of the meetings on 23rd and 30th of April and the opening statements and submissions provided to the Committee, which are included as an Appendix to this letter.

The Committee is satisfied that it has performed due scrutiny on this item, notwithstanding the compressed time period available for consideration of the issue, due to the return date of the referral motion. Following two, three-hour, hearings dedicated to the item, all members present had spoken and the engagement concluded when no further members were offering.

The Committee hopes that these and the other matters raised in our meetings help to inform a thorough debate on the matter and looks forward to further engagement and debate on this Motion in the course of its consideration in both Houses.

Yours sincerely,



James Lawless TD
Cathaoirleach

2nd May 2024

[Deputy Alan Farrell wished for his dissent to this letter to be recorded].

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Joint Committee on Justice Meeting, 30 April 2024 Motion on EU Asylum and Migration Pact

Opening statement of David Leonard BL

I thank the Cathaoirleach and the committee for the invitation to attend today.

Some people fear the Pact will lead to greater migration flows into Ireland and are concerned that the European Court of Justice will now have the final say on interpreting the substance of asylum law. In reality, that has been the position since the original Qualification Directive in 2006. And that power residing in Luxembourg hasn't caused any problems for the State.

Concerns have been raised that new burden-sharing obligations will lead to greater flows of people to here. But any burden sharing may be a proportionate price of remaining within the European club when it comes to asylum and immigration.

Some advocacy groups are concerned that the system will be less fair. But several key improvements in procedural fairness can be identified. Now, the asylum interview must be the subject of a video or audio recording, which must be shared with applicants and their lawyers before the decision is made. That is an improvement in fairness. If applicants claim that inconsistencies in their account were down to a bad interpreter, that can be objectively checked, helping applicants where there was a genuine interpretation error. And it will help the authorities if the interpretation difficulty was simply manufactured.

There is a new EU law right to have relevant documents translated. There's a fairer test for whether an applicant should be permitted to make a subsequent application.

These improvements are not push factors that will attract more applicants. Rather, they are procedural improvements that should lead to fewer judicial reviews.

Concerns around the border procedure have been raised by some advocacy groups. But a reading of the relevant provisions shows that the border procedure manifestly does not mean mandatory detention. And it's clearly and unambiguously stated in law that the border procedure must enable a complete and fair examination of claims. The courts, both

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in Dublin and Luxembourg, will not shy away from condemning any implementation of the border procedure that leads to unfairness.

There is no interest group on either side that is entirely happy with the Pact—not necessarily a sign that it is bad. Rather, this may indicate an imperfect consensus based on compromise.

When upgrading a computer network, it's dangerous to leave one computer running the old software. There is a risk to Ireland's interests if we are left running the old version of EU legislation, crudely tacked on to the new legislation in force everywhere else. The edges of the old system not seamlessly meeting those of the new is the sort of thing that could easily lead to generic judicial-review arguments, applicable in every case, that could cause paralysis in decision making.

Statement to the Oireachtas Justice Committee members on the EU Migration and Asylum Pact

30 April 2024



Introduction

Dear Committee members,

We believe the reforms contained within the EU Asylum and Migration Pact reflect an effort to limit access to protection for refugees in Europe. They will result in less safeguards, increased detention and destitution among people seeking protection. Below, we highlight some of our main concerns, particularly around the border procedure, and include references to more information on the consequences of the Pact across the EU.

More than 160 organisations across Europe, including global human rights organisations such as Amnesty and Human Rights Watch, have raised concerns about the Pact's contents.

Of most concern is that people who arrive without documentation and those that have had to cross a border illegally will be detained or at least their movement restricted. In our experience, this will include applicants from countries with high rates of refugee declarations, including Afghanistan and Somalia, who often have no alternative other than to travel without passports or use substitute documents.

People who arrive from countries with a with a recognition rate of 20% or less will also be subject to detention. They will also be channeled into an accelerated border procedure. This risks overlooking those who are most vulnerable and in need of protection, and whose cases often require legal advice and careful consideration. We note that, in the context of an Irish average refugee recognition rate of approximately 35%, a recognition rate of 20% reflects a substantial need for protection.

We are concerned that limited vulnerability assessments will not be sufficient to identify particularly vulnerable people. This, coupled with provision for detention, could have significant consequences for the rights and wellbeing of people seeking protection. The Irish government recently suspended the Vulnerability Assessment procedure, which the Reception Conditions Directive requires be carried out on all international protection applicants within three months of an application for asylum. We have serious doubts that applicants will receive adequate vulnerability assessments before being detained; subjected to accelerated procedures; and returned/deported to country where they face persecution or harm.

Underlying our concerns is the fact that, despite an increase in applications over the last four years (and the preceding decline in applications between 2016 and 2019), the EU's share of the world's refugee population has decreased from 70% in 1993 to under 20% since 2018. According to UNHCR, about 74% of the world's refugees are hosted by low-income and middle-income countries, i.e. outside the EU. UNHCR estimate that 69% of refugees and other people in need of international protection lived in countries neighbouring their countries of origin. More people need and are receiving protection than ever before, but in the worst political and legal climate and framework than ever before. Over the last year at EU level, the recognition rate, which reflects the percentage of asylum applications that receive decisions granting refugee status and subsidiary protection, fluctuated at around 45%.

In Ireland, over the last three years (2021, 2022, 2023) 3 in 10 applications have been successful at first instance; add the permission to remain category and it is 5 in 10. 3.5 in 10 appeals are

successful. Given the very rigorous consideration of protection applications at first instance and appeal, this shows people have real protection needs which are recognized by the State

While the Pact began with good intentions, it has been gradually eroded by various member states' hardening positions.

We are not opposed to harmonisation and common standards. If anything however, we need compliance with existence body of legislation rather than a continued need to reform.

European Council on Refugees and Exiles summary:

The Irish Refugee Council are a member of ECRE. ECRE have followed the duration of the negotiations closely. This is the summary of ECRE's critique of the pact:

- Reduction in protection standards
- Model based on containment at the borders in sub-standard asylum procedures
- Extensive use of detention
- Disproportionate focus on deportation/return
- Volume and complexity of proposals (approximately 1,300 pages in total)
- Use of derogations / De-harmonization
- Do not tackle the key problems – responsibility sharing rules /Dublin + compliance
- Externalisation focus
- Punitive approach – reception withdrawal
- Compliance problems over-looked

The Asylum Procedure Regulation:

- People who apply for asylum will be channeled into either normal or “accelerated procedures,” also referred to as the border procedure.
- People subject the border procedure would not be considered to have legally entered the EU.
- The border procedure will often take place in detention. The ‘legal fiction of non-entry’ applies, even when the procedure takes place away from the border, elsewhere within the state, which is allowed.
- Those who are processed under the border procedure will not be authorised to enter Ireland and will be accommodated at designated locations, this can include detention.
- The border procedure will have shorter timeframes for making decisions, fewer safeguards, and limited access to legal advice.
- People who come from a country where the refugee recognition rate is less than 20% (across the EU) will be automatically referred to the border procedure. This would create a two-tier asylum system based on nationality. These risks overlooking a person's individual reasons for applying. We also note that a recognition rate of 20% is indicative of a high rate of protection need, given that Ireland's average recognition for 2022 and 2023 was approximately 35%.
- Applicants who receive negative decisions will be fast-tracked for deportation. An appeal against a negative decision will not pause the deportation/return procedure, meaning that a person may receive

a positive appeal decision after being deported to a country where they face risk. Across the EU, over one third of appeals result in the award of a protection status.

- Applicants can apply to suspend a deportation pending the appeal decision but, significantly, with a short deadline and requiring a separate legal challenge.
- This will limit access to protection in Europe and will result in people being returned to countries where they face persecution and harm. This would be a violation of the principle of non-refoulement.
- In cases where people cannot be returned in the time provided, the border procedure is to be continued, providing for detention pending deportation of 3-6 months - in extreme cases even 12 months.
- Families with children will not be exempted from the border procedure, with only limited additional safeguards.
- Unaccompanied minors will be channelled to the “regular asylum procedure” and will have the right to enter the territory, unless the minor is considered to be a danger to national security or public order.
- We would be greatly concerned that unaccompanied minors, who may be incorrectly processed as adults, could be subject to the border procedure. In the past year, failure to correctly identify unaccompanied minors has resulted in minors sleeping rough in Dublin.
- The border procedure does not allow people to apply for other forms of protection, such as humanitarian permission to remain. This could particularly impact survivors of human trafficking, especially as they will have limited access to legal representation.

References and further info:

- <https://ecre.org/editorial-all-pact-ed-up-and-ready-to-go-eu-asylum-law-reforms/>
- <https://www.rescue.org/eu/article/what-eu-pact-migration-and-asylum>
- <https://emn.ie/cabinet-greenlights-eu-migration-and-asylum-pact-opt-in-approval-process/>

The Eurodac Regulation:

- Increased provision for surveillance and data-sharing will increase the criminalisation, securitisation and racialisation of our asylum procedures.
- The conflation of internal security and irregular migration is damaging to people seeking protection and threatens the credibility of our asylum process.
- For more, see: <https://picum.org/blog/the-eu-migration-pact-a-dangerous-regime-of-migrant-surveillance/>

The Asylum and Migration Management Regulation:

- The “Solidarity Mechanism” will not reduce the disproportionate responsibility on border states.
- States can, and will, choose to provide funding to border states rather than accepting relocation of asylum applications from border countries.
- ‘Solidarity funds’ can be used to fund detention centres, pushback activities, and unethical migration control activities in countries outside of the EU.
- The ‘solidarity mechanism’ will not disincentivise pushbacks or the ignoring of boats in distress.
- For more information, see: <https://hias.org/news/eu-pact-migration-and-asylum-explained/>

The Crisis and Force Majeure Regulation:

- “Instrumentalisation” and derogations will allow for further pushback at the EU’s borders.
- The basic rights, including the right to seek asylum, and the wellbeing of people fleeing persecution will not be protected.
- For more, read this joint NGO statement, available at:
<https://www.rescue.org/eu/statement/ngos-warn-eu-instrumentalisation-regulation-ceas>

It is our opinion that the Irish government should not opt in to the EU Pact on Migration and Asylum. We believe it will result in deterioration of standards and an asylum procedure which does not respect basic rights or contain safeguards for vulnerable applicants.



Opening remarks to the Joint Committee on Justice, on the Motion on Proposed approval by Dáil and Seanad Éireann of the proposal for Regulations and a Directive of the European Parliament and of the Council on international protection, asylum and migration, Tuesday 30th April 4.00pm.

I would like to thank the Chair and committee for the invitation to come before you today and for the opportunity to take part in this discussion. My name is Edel McGinley, Director with Migrant Rights Centre Ireland (MRCI) and with me here today is Neil Bruton, Campaigns Manager in MRCI.

For over twenty years, MRCI has been working with people in precarious and poorly regulated employment sectors, with undocumented people and with victims of trafficking. Our work focuses on people – people whose rights and dignity are challenged or denied, and with people who see these injustices and come together to address them. Our work enables people to flourish, thrive and prosper.

Throughout history, people have risked everything in the hope of a better life. Most of us believe that all people deserve to live in peace and safety, free from fear and danger. Whether we are black, white or brown, have lived here all our lives or come here seeking safety - most of us just want to make a better life for our families.

Ireland is a country with a long history of migration. When times have been challenging, people the length and breadth of the country have moved to seek a better future for themselves and their families. We continue to do so.

In the past two years so many local communities have led the way in treating people coming to our shores the way we'd want to be treated. From tidy towns to men sheds, ordinary decent people put out a hand of welcome. If any one of us feared for our life or for our family, we'd like to know that others would help us to safety. We therefore have a responsibility to ensure that people's basic rights to live free from danger are upheld and protected.

By having a fair asylum process we can do that and show that, when people are in harm's way, we'll do the right thing. When we treat people seeking asylum with compassion and dignity, they can get on with rebuilding their lives in our communities.

We cannot let a few bullies distract us, whip up fear, and spread dangerous lies about those of us who are different because of where we come from. We cannot fall into this trap.

Our policies for people seeking asylum should respect human dignity, but the government is choosing to sign up to a system that will erode rights and dignity.

The child forced to leave their home, a person or family forced to flee, need our compassion. This Pact proposes to detain people, including children at borders because they are from a so-called safe country, and drastically reduce the time people have to make their case.

This arbitrary group approach disregards the many reasons people may have been forced to move and the difficulties they face on their journey. All people deserve a system that fairly examines their individual case, in a safe space, with time and legal support, to assert their rights.

These worrying proposals also extend to people living and working in Ireland long term. It means that **people could be singled out on the street because they look different. It means people's right to privacy and due process are under threat.** The potential for harm to people and communities is immense.

The solidarity measures may see wealthy countries like Ireland simply pay from our large budget surplus, and not support our fair share of people. Doing what's right means upholding solidarity and fairness. We cannot turn an issue of human rights into pay offs and political bickering.

We need to remember that **human rights are the tools we ALL rely on for our basic rights and freedoms.** They belong to every person in the world, from birth until death. And they are also based on the choices our leaders make. We cannot simply allow these to be eroded by a few people who have managed to spread fear and disinformation and baited politicians to adopt regressive and restrictive policies, like this one.

We all have a stake in making the world a safer place and in doing our fair share. People need a chance to rebuild their lives and integrate into our communities and the state needs to also invest in the material needs of local communities, so that all can flourish and prosper.

Most of us believe that immigrants contribute to our culture and community, to our workplaces, and that we are all the better off because of this.

We call on the committee to ensure Ireland rejects regressive policies that row back on human rights and dignity in all their forms for all people.

Thank you. We are happy to take questions and look forward to the discussion.

*Ends

Opening Statement to the Joint Oireachtas Committee on the the proposal for Regulations and a Directive of the European Parliament and of the Council on international protection, asylum and migration.

April 30th 2024

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Nasc
Migrant & Refugee Rights

Cathaoirleach, Members of the Committee, thank you for the opportunity to share our observations on the New Pact on Migration and Asylum.

Nasc, the Migrant and Refugee Rights Centre has been working with refugees and asylum seekers for over two decades. Our view is that the EU Migration Pact is fraught with significant flaws. We are concerned that procedural guarantees and protections for asylum seekers will be sacrificed for deterrence and creating efficiencies in processing.

Given the time limits, I have confined our comments to three key areas of concern:

Firstly, the **screening process and accelerated border procedure** that would be created by the Asylum Procedures Regulation¹ is detrimental to the freedom of international protection applicants. Those who are processed under the border procedure will not be authorised to enter the State. Instead, their cases will be processed in *closed* facilities for up to twelve weeks in ‘blurry soil’, that is in designated facilities close to the border that will not be considered the territory of the Member State. Families with children under the age of 12 can be held in these facilities, raising serious concerns about the well-being and rights of minors in these settings.

The **mandatory timeline of just twelve weeks** imposed by the Asylum Procedures Regulation to complete applications, appeals and removal decisions is exceedingly challenging and may result in rushed and inadequate assessments that compromise the integrity of the asylum process. I am concerned about the adequacy of legal aid that can be provided under these rushed timelines.

Furthermore, we've found that it often takes weeks or even months for asylum seekers to feel safe enough to disclose traumatic experiences, such as domestic, sexual and gender-based violence (DSGBV) or torture. I'm concerned that these accelerated processing times may prevent victims and survivors from fully disclosing their experiences or seeking necessary support. I doubt authorities' ability to identify vulnerable applicants within such tight timeframes.

The application of the border procedure to **individuals deemed to have "misled the authorities"** poses serious risks to the fairness of asylum procedures and fails to understand that those most at risk of State-led persecution are least likely to be able to apply for national identity documents before fleeing their country.

¹ Amended Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

The provisions targeting **applicants from countries with a low recognition rate** risk creating a self-reinforcing cycle of rejection. Accelerated procedures increase the likelihood of negative outcomes for applicants from these countries and the Crisis and Instrumentalization Regulations allow derogations on procedural standards.

Secondly, the Asylum Migration Management Regulation's² **mechanism for solidarity** among EU Member States is unlikely to achieve its goals. While countries are given options to contribute financially or provide technical support, the likelihood of successful implementation is dubious. Many states may opt for financial contributions to shift responsibility to border states or opt not to implement the solidarity mechanism at all, despite the threat of legal action³, exacerbating existing disparities in asylum distribution.

Thirdly, the Pact's reliance on **externalisation** raises serious ethical and legal concerns. By outsourcing border control to countries outside the European Union, including countries with poor human rights records such as Turkey, Libya and Tunisia, we risk not just turning a blind eye to human rights abuses, violence, exploitation and lack of access to asylum procedure, but funding and becoming complicit in these human rights violations.

² Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109

³ See for example comments from Ylva Johansson as reported in Euronews, *EU countries not enforcing migration pact could face legal action, says Johansson*, 11th April 2024 available at <https://www.euronews.com/my-europe/2024/04/11/eu-countries-not-enforcing-migration-pact-could-face-legal-action-says-johansson>

Nasc, Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork City, Ireland. Nasc, the Irish word for 'link', empowers migrants to realise and fulfil their rights. Nasc works with migrants and refugees to advocate and lead for change within Ireland's immigration and protection systems, to create an inclusive and equal Ireland that realises the rights of all migrants and refugees.



****Check against delivery**

Oireachtas Joint Committee on Justice

Tuesday 30 April 2024

Opening Statement

Mr Enda O'Neill, Head of Office, UNHCR Ireland

Chairperson, members of the Committee,

May I start by thanking the Joint Committee on Justice for the invitation to address you today on UNHCR's views on the proposed motion concerning Protocol 21 and Ireland's opt-in to seven instruments of the EU Pact on Migration and Asylum.

The current EU asylum system has not been implemented in a way which has managed asylum for Member States, nor promptly delivered protection in practice for refugees. Dangerous practices, such as denial of access to territory, pushbacks, and the non-implementation of fair and efficient procedures and solidarity, cannot continue as they undermine a well-functioning EU asylum system. The long-term lack of agreement has also led to a rise in externalization proposals - shifting responsibility away from Europe and putting access to territory and asylum in the EU under threat. We hope the eventual adoption of the Pact will stand in firm opposition to these proposals.

As population movements increase globally, addressing the challenges posed by forced displacement demands a coherent and effective strategy. We believe the Pact has the potential, if implemented with sufficient safeguards, to ensure access to territory and asylum in the EU for individuals seeking international protection, while ensuring the respect for their human rights.

Accordingly, UNHCR welcomes the agreement reached between Member States in the Council and the European Parliament on the Pact and its anticipated adoption in the coming weeks. But Legal reform is merely the first step - our attention must now turn to the Pact's protection-sensitive implementation. Resources should be dedicated to establish fair and fast asylum procedures with the necessary procedural safeguards, including protection-sensitive and child-sensitive border procedures, as well as adequate material reception conditions, in particular for vulnerable groups. We believe that detention should be a last resort and we welcome the assurances provided by Minister McEntee at this committee on this point last week. We also believe that border procedures should not be applied to unaccompanied or separated children, including for cases of security or public order. The use of such procedures is also not suitable for victims of trauma or trafficking and persons with mental disabilities. These elements must form the cornerstones of regional and national implementation plans.

A fair distribution of responsibility and solidarity is another vital cornerstone of the new Pact. UNHCR welcomes that solidarity has been codified into law for the first time, and has long called for a functioning solidarity mechanism, with responsibility-sharing across the Union to support EU Member States where most asylum seekers arrive. We welcome the mandatory but flexible solidarity contained in the Pact and call on states to prioritise relocation as a solidarity measure over other options, UNHCR strongly discourages utilising financial solidarity to invest in deterrence measures.

UNHCR looks forward to working with the government and members of the Oireachtas to transform the Pact's commitments into concrete action. Thank you for your attention and I look forward to an exchange with the Committee on these issues.

Briefing paper to Oireachtas Justice Committee members on the EU Migration and Asylum Pact

19 April 2024

Introduction

Dear Committee members,

This is a short briefing paper that may be helpful in your consideration of the EU Asylum and Migration Pact.

We believe the reforms contained within the EU Asylum and Migration Pact reflect an effort to limit access to protection for refugees in Europe. They will result in less safeguards, increased detention and destitution among people seeking protection. Below we highlight some of our main concerns, particularly around the border procedure, and include references to more information on the consequences of the Pact across the EU.

More than 160 organisations across Europe, including global human rights organisations such as Amnesty and Human Rights Watch, have raised concerns about the Pact's contents.

Of most concern is that people who arrive without documentation and those that have had to cross a border illegally will be detained. In our experience, this will include applicants from countries with high rates of refugee declarations, including Afghanistan and Somalia, who often have no alternative other than to travel without passports or use substitute documents.

People who arrive from countries with a with a recognition rate of 20% or less will also be subject to detention. They will also be channeled into an accelerated border procedure. This risks overlooking those who are most vulnerable and in need of protection, and whose cases often require legal advice and careful consideration. We note that, in the context of an Irish average refugee recognition rate of approximately 35%, a recognition rate of 20% reflects a substantial need for protection.

We are concerned that limited vulnerability assessments will not be sufficient to identify particularly vulnerable people. This, coupled with provision for detention, could have significant consequences for the rights and wellbeing of people seeking protection. The Irish government recently suspended the Vulnerability Assessment procedure, which the Reception Conditions Directive requires be carried out on all international protection applicants within three months of an application for asylum. We have serious doubts that applicants will receive adequate vulnerability assessments before being detained, subjected to accelerated procedures, and returned/deported to country where they face persecution or harm.

Underlying our concerns is the fact that, despite an increase in applications over the last four years (and the preceding decline in applications between 2016 and 2019), the EU's share of the world's refugee population has decreased from 70% in 1993 to under 20% since 2018. According to UNHCR, about 74% of the world's refugees are hosted by low-income and middle-income countries, i.e. outside the EU. UNHCR estimate that 69% of refugees and other people in need of international protection lived in countries neighbouring their countries of origin.

Also, that people need protection, More people need and are receiving protection than ever before but in the worst political and legal climate and framework than ever before.

Over the last year at EU level, the recognition rate, which reflects the percentage of asylum applications that receive decisions granting refugee status and subsidiary protection, fluctuated at

around 45%.

In Ireland, over the last three years (2021, 2022, 2023) 3 in 10 applications have been successful at first instance, add the permission to remain category and it is 5 in 10. 3.5 in 10 appeals are successful. Given the very rigorous consideration of protection applications at first instance and appeal, this shows, contrary to what circulates online and on some websites, people have real protection needs.

While the Pact began with good intentions, it has been gradually eroded by various member states' hardening positions. We agree that change is needed. But not at any price.

European Council on Refugees and Exiles summary:

The Irish Refugee Council are a member of ECRE. This is the summary of ECRE's critique of the pact:

- Reduction in protection standards
- Model based on containment at the borders in sub-standard asylum procedures
- Extensive use of detention
- Disproportionate focus on deportation/return
- Volume and complexity of proposals (approximately 1,300 pages in total)
- Use of derogations / De-harmonization
- Do not tackle the key problems – responsibility sharing rules /Dublin + compliance
- Externalisation focus
- Punitive approach – reception withdrawal
- Compliance problems over-looked

The Asylum Procedure Regulation:

- People who apply for asylum will be channelled into either normal or “accelerated procedures,” also referred to as the border procedure.
- People subject the border procedure would not be considered to have legally entered the EU.
- The border procedure will often take place in detention. The ‘legal fiction of non-entry’ applies, even when the procedure takes place away from the border, elsewhere within the state, which is allowed.
- Those who are processed under the border procedure will not be authorised to enter Ireland and will be accommodated at designated locations, this can include detention.
- The border procedure will have shorter timeframes for making decisions, fewer safeguards, and limited access to legal advice.
- People who come from a country where the refugee recognition rate is less than 20% (across the EU) will be automatically referred to the border procedure. This would create a two-tier asylum system based on nationality. These risks overlooking a person's individual reasons for applying. We also note that a recognition rate of 20% is indicative of a high rate of protection need, given that Ireland's average recognition for 2022 and 2023 was approximately 35%.

- Applicants who receive negative decision will be fast-tracked for deportation. An appeal against a negative decision will not pause the deportation/return procedure, meaning that a person may receive a positive appeal decision after being deported to a country where they face risk. Across the EU, over one third of appeals result in the award of a protection status.
- Applicants can apply to suspend a deportation pending the appeal decision but, significantly, with a short deadline and requiring a separate legal challenge.
- This will limit access to protection in Europe and will result in people being returned to countries where they face persecution and harm. This would be a violation of the principal of non-refoulement.
- In cases where people cannot be returned in the time provided, the border procedure is to be continued, providing for detention pending deportation of 3-6 months - in extreme cases even 12 months.
- Families with children will not be exempted from the border procedure, with only limited additional safeguards.
- Unaccompanied minors will be channelled to the “regular asylum procedure” and will have the right to enter the territory, unless the minor is considered to be a danger to national security or public order.
- We would be greatly concerned that unaccompanied minors, who may be incorrectly processed as adults, could be subject to the border procedure. In the past year, failure to correctly identify unaccompanied minors has resulted in minors sleeping rough in Dublin.
- The border procedure does not allow people to apply for other forms of protection, such as humanitarian permission to remain. This could particularly impact survivors of human trafficking, especially as they will have limited access to legal representation.

References and further info:

- <https://ecre.org/editorial-all-pact-ed-up-and-ready-to-go-eu-asylum-law-reforms/>
- <https://www.rescue.org/eu/article/what-eu-pact-migration-and-asylum>
- <https://emn.ie/cabinet-greenlights-eu-migration-and-asylum-pact-opt-in-approval-process/>

The Eurodac Regulation:

- Increased provision for surveillance and data-sharing will increase the criminalisation, securitisation and racialisation of our asylum procedures.
- The conflation of internal security and irregular migration is damaging to people seeking protection and threatens the credibility of our asylum process.
- For more, see: <https://picum.org/blog/the-eu-migration-pact-a-dangerous-regime-of-migrant-surveillance/>

The Asylum and Migration Management Regulation:

- The “Solidarity Mechanism” will not reduce the disproportionate responsibility on border states.
- States can, and will, choose to provide funding to border states rather than accepting relocation of asylum applications from border countries.
- ‘Solidarity funds’ can be used to fund detention centres, pushback activities, and unethical migration control activities in countries outside of the EU.
- The ‘solidarity mechanism’ will not disincentivise pushbacks or the ignoring of boats in distress.
- For more information, see: <https://hias.org/news/eu-pact-migration-and-asylum-explained/>

The Crisis and Force Majeure Regulation:

- “Instrumentalisation” and derogations will allow for further pushback at the EU’s borders.
- The basic rights, including the right to seek asylum, and the wellbeing of people fleeing persecution will not be protected.
- For more, read this joint NGO statement, available at:
<https://www.rescue.org/eu/statement/ngos-warn-eu-instrumentalisation-regulation-ceas>

It is our opinion that the Irish government should not opt in to the EU Pact on Migration and Asylum. We believe it will result in deterioration of standards and an asylum procedure which does not respect basic rights or contain safeguards for vulnerable applicants.

If the regulations are approved, as a charity with the protection of refugees in our mission, we will request that civil society be involved in the development of the national implementation plan. We will also be closely scrutinising draft legislation, relentlessly calling for the highest standards and protections in line with the fundamental right to claim asylum and existing international protection and human rights law and monitoring implementation.



Movement of Asylum Seekers in Ireland (MASI)

Open Letter to the Oireachtas Committee on Justice

30th April 2024

Detention has no place in the international protection process

The Movement of Asylum Seekers in Ireland (MASI) is deeply alarmed by the government's decision to opt-in to the EU's Migration and Asylum Pact. We should all recall that this is a government who came into power promising to move towards an asylum process that upholds all the fundamental human rights for people engaged in the international protection process. This promise came with the 'integration from day one' phrase cabinet minister enthusiastically repeated when talking about their plans. It was surprising then to read that the same cabinet ministers approved plans for Ireland to opt-in to the Migration and Asylum Pact which moves from 'integration from day one' to incarceration from day one.

Border Procedure

MASI is concerned that the Migration and Asylum Pact introduces mandatory detention at the border for a category of asylum seekers. This is a troubling development for Ireland as it goes from people having their asylum claims processed while in the abhorrent system of Direct Provision – to being processed while in detention. In general, deprivation of liberty is used as a measure of last resort because it is a violent act. To detain people for seeking asylum in Ireland is simply cruel. More worrying are reports that the government is already jailing asylum seekers for not having a valid passport or using a fake passport. This is troubling because it goes against the spirit of the Geneva Convention on the Status of Refugees which prohibits punishing a refugee for 'illegal entry or presence' in the territory where refuge is sought. Jailing asylum seekers amounts to punishment and it is an act of cruelty.

It is difficult to understand how Irish authorities expect people fleeing persecution, from a country that requires a visa to enter Ireland, to travel to Ireland for the purpose of seeking

asylum. MASI would appreciate it if the Minister for Justice could outline ways for nationals who require a visa such as Sudan, Somalia, Palestine, and the like, to travel to Ireland for the sole purpose of seeking asylum. Moreover, it is illogical to expect an asylum seeker running away from their own government, to approach that very same government and ask them for a passport so that they can run and hide from them. The detention contained in the border procedure of the migration and asylum pact effectively amounts to Trump-style travel bans because it makes it impossible for people in difficult situations to seek safety here. And these are the very situation the Geneva Convention was conceived for.

Ireland has a long history of welcoming refugees, including people who had no choice but to use fake passports or pay an agent in order to get here. And from our experience, they are open and declare that they used a fake passport or an agent to arrange their travel. Many of them are Irish citizens today and they were never jailed for doing all they could to flee persecution. Opting into the Migration and Asylum Pact would be a very sharp turn to the right that punishes people for approaching an EU frontier to seek asylum.

MASI urges TDs and Senators to reject the government's plans to opt-in to the EU's Migration and Asylum Pact. Migration trends are always changing and States can respond better to those changes based on their circumstances. It takes years to get consensus at EU level on migration and asylum. Once in, you may need to spend years trying to persuade the other 26 Member States to amend parts of these regulations should they become challenging to implement. A humane and efficient asylum process such as legally binding deadlines for issuing decisions can be achieved through simple amendments to domestic legislation.

ENDS

About MASI - the Movement of Asylum Seekers in Ireland is a grassroots organisation based in Ireland. We are people who are or have been in the asylum and direct provision system in Ireland, working and advocating together for justice, freedom and dignity for refugees, asylum seekers and migrants. Our focus is on the Right to Education and the Right to Work for all people seeking asylum, on the complete abolition of direct provision and an end to deportations.

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