



**RESEAU EUROPEEN
DES FEMMES MIGRANTES**

EU LAW EVOLUTION

Violence against women . Human Trafficking . Migration and Asylum

EP mandate 2019 – 2024

- 01.** NEW DIRECTIVE ON COMBATING VAWG AND DOMESTIC VIOLENCE
- 02.** REVISED ANTI-TRAFFICKING DIRECTIVE
- 03.** NEW MIGRATION AND ASYLUM PACT
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HELLO!

Welcome to the presentation on recent developments in EU law, tailored for the European Network of Migrant Women member organisations. This session, designed and facilitated by Alyssa AHRABARE, will explore the latest legal changes and their implications for our communities.



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EU DIRECTIVE (EU) 2024/1385 ON COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE



Legislative initiative

The Commission (Vice-President for Values and Transparency, Vera Jourová and Commissioner for Equality, Helena Dalli) submitted the proposal for a directive on combating violence against women and domestic violence on **March 8th 2022**.



Amendments and negotiations

Frances Fitzgerald (FEMM) and Evin Incir (LIBE) were the European Parliament's rapporteurs. On June 28th 2023 they reached an agreement on amendments and started the **trialogue negotiations** with the Council of the EU and the Commission in July 2023.



Political agreement and adoption

The agreement between Council and Parliament was reached on February 6th 2024. The Plenary vote in the European Parliament took place on **April 24th 2024**.



Transposition

Member states have three years from the entry into force of the directive to transpose it into national law.

ENOMW'S ADVOCACY

- **2021:** EC consultation (Have Your Say portal)
- **2022:**
 - Mobilisation to take away “sex work” from the text
 - Full analysis of the proposal, amendments to the articles and recitals and explanatory statement.
 - Meetings with the EP rapporteurs / teams.
 - Consultations with the FEMM committee and LEFT group.
 - Letters to 100+ MEPs.
 - Inputs to EMPL and JURI reports
- **2023:**
 - #FreeFromProstitution mobilisation in the European Parliament
 - Amendment proposals, sharing of analysis and data with the teams working on the text in FEMM and LIBE committees.
 - Analysis of the rapport de force in the Council + Joint meeting with the French permanent mission in Brussels.
 - Mobilisation towards the French government.
 - Joint mobilisation on the cyberviolence articles.
 - Meetings with the EP rapporteurs and their teams.
 - Participation in EWL event in the European Parliament.
 - Meeting and exchanges with Karen Vandekerchove, Head of the Gender Equality Unit of the European Parliament.
- **2024:**
 - Analysis of the final text and expert statement.



European Network of Migrant Women

AMENDMENTS PROPOSALS

on the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

Date: 5 June 2022

EU Directive on Violence against Women

Expert Statement



February 2024

CONTENT OF THE DIRECTIVE: OVERVIEW

- ▶ • **Criminal Offenses and Penalties:** The Directive lists offences that must be criminalised across the EU, which include **female genital mutilation, forced marriage, and certain forms of online violence such as non-consensual sharing of intimate images, cyberstalking, cyber harassment, cyber incitement to hatred or violence and cyberflashing**. It also includes a **list of aggravating circumstances**.
- ▶ • **Victims Protection, Support and Access to Justice:** The Directive contains rules on the measures of assistance and protection that member states should provide to victims such as to ensure they have access to justice and support services. This includes **establishing shelters, and hotlines, and providing legal, medical, and psychological assistance to victims**.
- ▶ • **Prevention and Education:** The Directive emphasises preventive measures such as public awareness campaigns to change societal attitudes and reduce violence. These measures aim to promote the central role of **consent in sexual relationships**.
- ▶ • **Data Collection and Reporting:** **Improved data collection and reporting mechanisms are required** to monitor the prevalence of violence and the effectiveness of the measures implemented. + As a minimum, Member States should ensure the possibility of reporting cybercrimes online.
- ▶ • **Children as Victims:** **The Directive recognises children who witness domestic violence as victims**. When children report a crime committed by someone with parental responsibility, authorities will have to take measures to protect the safety of the child before informing the alleged perpetrator.
- ▶ • **Intersectional Discrimination:** Special attention is given to victims experiencing intersectional discrimination based on sex and other grounds.
- ▶ • **Coordination and Cooperation:** The directive calls for enhanced coordination and cooperation between Member States, public authorities, and civil society organisations to effectively combat and prevent violence.

The Directive includes an explicit prohibition of non-regression, that prevents EU Member States from reducing their existing level of victims protection when transposing the Directive.

CONTENT OF THE DIRECTIVE: ZOOM ON USEFUL MEASURES

ARTICLE 3

Member States shall ensure that the following intentional conduct is punishable as a criminal offence: (a) excising, infibulating or performing any other mutilation to the whole or any part of the labia majora, labia minora or clitoris; (b) coercing or procuring a woman or a girl to undergo any of the acts referred to in point (a)

ARTICLE 4

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

(a) forcing an adult or a child to enter into a marriage;

(b) luring an adult or a child to the territory of a country other than the one in which he or she resides with the purpose of forcing that adult or child to enter into a marriage

ARTICLE 11

one or more of the following circumstances **can** be regarded as an aggravating circumstance: (a) the offence (...) was committed **repeatedly**; (b) (...) against a person made **vulnerable** by particular circumstances, such as a situation of **dependence** or a state of physical, mental, intellectual or sensory disability; (c) (...) against a **child**; (d) (...) in the presence of a child; (e) (...) **two or more persons acting together**; (f) extreme levels of **violence**; (g) (...) the use of a weapon or the threat of [it]; (h) [threat / force / coercion] ; (i) the conduct caused the **death** of the victim or severe physical or psychological harm to the victim; (j) [recidivism]; (k) (...) **against a former or current spouse or partner**; (l) (...) by a member of the family of, or a person cohabiting with, the victim; (m) (...) abusing a recognised position of **trust, authority or influence**; (n) against a person because that person was **a public representative, a journalist or a human rights defender**; (o) the intention of the offence was to preserve or restore the so-called 'honour' of a person, a family, a community or another similar group; (p) the intention of the offence was to punish the victim for the victim's sexual orientation, gender, colour, religion, social origin or political beliefs

CONTENT OF THE DIRECTIVE: ZOOM ON USEFUL MEASURES

Victim Protection, Support and Access to Justice:

Article 15(3)

Where the competent authorities have reasonable grounds to suspect that a criminal offence might have been committed, they shall, **without undue delay, effectively investigate, upon receipt of a complaint or on their own initiative**, acts of violence against women or domestic violence. They shall ensure that an official record is filed and preserve a record of relevant findings and evidence in accordance with national law. + **measures on collection and safekeeping of forensic evidence.**

Article 20

Member States shall ensure that, in criminal proceedings, evidence concerning the past sexual conduct of the victim or other aspects of the victim's private life related thereto is permitted **only where it is relevant and necessary.**

(26a) It is important that Member States ensure that victims which are third-country nationals, irrespective of their residence status, are **not discouraged from reporting and are treated in a non-discriminatory manner** as regards their residence status. **Member States may decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory** (Victims Rights Directive).

(32) When assessing the victim's resources for the purpose of deciding whether to grant legal aid, Member States should consider the victim's effective access to his or her financial resources. Domestic violence can translate into economic control by the offender, and victims might not have effective access to their own financial resources

(33) Member States should ensure that their confidentiality rules do not constitute an obstacle for healthcare professionals to report to the competent authorities.

(38) An individual assessment of the victim's needs should be initiated at the earliest possible stage, such as at the time of the victim first coming into contact with the competent authorities, as soon as possible.

CONTENT OF THE DIRECTIVE: ZOOM ON USEFUL MEASURES

Victim Protection, Support and Access to Justice:

(37) The investigations into or prosecutions of acts of rape should not be dependent on the reporting or accusation by the victims or by their representatives. Similarly, criminal proceedings should continue even if the victim withdraws the accusation.

(39) Circumstances requiring special attention might include, for example, the fact that the victim is **pregnant**, the victim's **dependence** on or relationship to the offender or suspect, the risk of the victim returning to the offender or suspect, recent separation from an offender or suspect, the potential risk that children are used to exercise **control** over the victim, the risks for victims with **disabilities**, and the use of companion animals to put pressure on the victim.

(57) Victims should be offered specialist support services irrespective of whether they have filed a formal complaint + dispositions on accessibility and training of staff in the following recitals.

(75) Member States should take measures to prevent the cultivation of harmful gender stereotypes in order to eradicate the idea of the inferiority of women or stereotyped roles of women and men. That could also include measures which **aim to ensure that culture, custom, religion, tradition or honour is not perceived as a justification for, or does not give rise to a more lenient treatment of, offences of violence against women or domestic violence.**

Data Collection:

Article 44

1. Member States shall have a system in place for the **collection, development, production and dissemination of statistics on violence against women or domestic violence.** The statistics (...) shall, as a minimum [be] **disaggregated by sex, age group (child/adult) of the victim and of the offender and, where possible and relevant, relationship between the victim and the offender and type of offence:** (a) the annual number of reported offences and of convictions of violence against women or domestic violence; (b) the number of victims who have been killed due to violence against women or domestic violence; (c) the number and capacity of shelters per Member State; and (d) the number of calls to national helplines.
+ dispositions on harmonisation and accessibility of collected data.

CONTENT OF THE DIRECTIVE: MAIN CRITICISMS

- **Abandonment of Key Articles:** Important provisions addressing widespread forms of violence such as rape and sexual assault were either abandoned or weakened. Prostitution, pimping, pornography (despite the clear legal basis), reproductive exploitation, forced sterilisation were not included. The wording of the articles on cyberviolence is very dangerous (serious harm / public – private / freedom of expression)
- **Consistency and Clarity:** Lack of clarity in the language, with "gender" and "sex" used interchangeably, leading to potential confusion and misinterpretation.
- Significant obligations imposed on Member States may be difficult to implement uniformly due to varying national legal frameworks and resources. There are **concerns about the readiness and capability** of all EU countries to meet the new standards, especially, skepticism about **whether adequate funding and resources** will be allocated to support the measures effectively, especially due to **the rejection of an amendment that would have made it obligatory for Member States to allocate sufficient, predictable, and sustainable funds for its implementation.**
- Regarding the participation and involvement of women's organisations and grassroots organisations, the lack of adequate capacity remains a challenge for their participation in implementing the Directive. **The text highlights women's rights organisations important role without introducing any obligation for the Member States to allocate resources to them.**
- **No firewalls are included to protect undocumented migrant women who have experienced violence against them and are undergoing reporting mechanisms** or are staying in women's shelters.

CONTENT OF THE DIRECTIVE: WHAT ABOUT MIGRANT WOMEN?

- The text **requires Member States to make shelters available to all women experiencing domestic abuse, regardless of their residence status.** This aligns with the Istanbul Convention.
- The text recalls the importance of ensuring that third-country nationals who are victims of violence are not discouraged from reporting regardless of their residence status, but it lacks specific measures to prevent discrimination and ensure equal access to support services and legal action for migrant women victims of violence.
- Specialist support for victims of sexual harassment at work does not address the specific needs of **domestic workers**, who are often migrant women. This sector is frequently unregulated by labor law and not subject to inspections, making domestic workers particularly vulnerable to sexual violence in their workplace.
- The directive builds a double standard between **forms of violence that disproportionately impact minority communities and others that are present in all societal strata.** This approach perpetuates the perception that **certain perpetrators, particularly those from non-migrant communities, have immunity from accountability.**

NEXT STEPS FOR NATIONAL WOMEN'S RIGHTS ORGANISATIONS

Organise **awareness-raising and educational campaigns** and workshops to further explain the directive to grassroots organisations in your own country and to inform migrant women about the rights and support they are entitled to. Such protections include: *Access to shelter, regardless of legal status ; Protection from forced marriage and FGM ; Right to file a complaint without being discriminated against ; right to access support services.*

Push for better data collection: Hold your Member States accountable regarding the data collection requirements laid out in the Directive. Only with such data will we be able to further advocate for effective responses to VAWG in the EU.

Lobby for the effective transposition / implementation of the directive at the national level. Member States have a consequent margin of manoeuvre when transposing the directive. Notably, **they can design measures that are more protective for women and girls.** Examples of what to advocate for during the implementation process:

- **VAWG online:** take away serious harm and the public-private divide. Explain that the existing framework on freedom of expression are sufficient and they should not prevent women and girls from being protected.
- **Firewalls:** advocate for strict firewalls to be put in place to prevent police forces to share data on victims to immigration services, at least until a proper risks assessment is conducted and the victim is put to safety.
- **Domestic workers:** push for specific dispositions regarding the protection of domestic workers, acknowledging that their workplace is the employers' home and they may fall through the cracks of regular work inspection schemes.
- **Strong legal definitions of FGM and forced marriage:** MS must criminalise these offences, but it is up to them how to phrase the legal definitions, how to characterise them and which sentences to apply (provided they respect the minimum standards laid out in the directive).
- **More funding for women's rights orgs:** The text highlights the important role of women's rights organisation in responding to VAWG, especially in prevention and victims support. This can be used to argue for better funding.
- **Stronger dispositions in rape laws:** Some dispositions highlight that 'culture' or 'past behaviour of the victim' shall not be used in rape cases to alleviate the responsibility of the perpetrator. The wording makes these dispositions not binding but you can push for a stronger approach.
- **Sexuality education:** The Directive mentions the needs for prevention and awareness raising, notably regarding consent in sexual relations. This can be used to advocate for more funding to systematise sexuality education courses in schools, based on feminist principles.
- **Better protection for children:** Amendments protecting children have been taken away from the final text. For example preventing the use of the PAS in Court or taking away perpetrators of domestic violence's parental authority. This still can be brought at national level, building on the Directive's acknowledgement of children's status of secondary victims.

REVISED EU DIRECTIVE 2011/36/EU ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS AND PROTECTING ITS VICTIMS



Legislative initiative

On December 19th 2022, the Commission published a legislative proposal to review the Anti-trafficking directive.



Amendments and negotiations

Malin Björk (LIBE) and Maria Eugenia Palop (FEMM) were the two European Parliament rapporteurs for this file. Collaboration with them was successful.



Political agreement and adoption

Interinstitutional agreement was reached on the proposal on 23 January 2024 and the Parliament adopted it on **April 23rd 2024**, during its plenary session.



Transposition

Member states have three years from the entry into force of the directive to transpose it into national law.

ENOMW'S ADVOCACY

- 2021: EC consultation (Have Your Say portal)
- 2022:
 - Collective organising with the Brussels Call
 - Meetings with Malin Björk's team
 - Meetings with FEMM committee secretariat
 - Letters to 100+ MEPs.
 - Amendment proposals
- 2023:
 - #FreeFromProstitution mobilisation in the European Parliament
 - Amendment proposals, sharing of analysis and data with the teams working on the text in FEMM and LIBE committees.
 - Leading the BC mobilisation on fighting the wording "forced surrogacy"
- 2024:
 - Analysis of the final text and expert statement.



22.05.2023

#FreeFromProstitution

**DAY OF ACTION FOR A EUROPE
FREE FROM PROSTITUTION**

JOIN OUR CONFERENCE!

**INTERSECTING DISCRIMINATIONS
IN THE SYSTEM OF PROSTITUTION**

Testimonies of survivors of prostitution

Presentations by international experts

Statements by Members of the European
Parliament



CONTENT OF THE DIRECTIVE: OVERVIEW

- **Inclusion of a call for MS to criminalise the purchase of sexual acts in the recitals.** We can hope this will also have a positive impact on the ongoing ECtHR case against France (challenging the 2016 abolitionist law).
- **Exploitation of surrogacy was added as a possible cause for trafficking – along with exploitation of forced marriage and illegal adoption.** This wording is considerably better than illegal or forced surrogacy that was considered both by the Council and within the EP. If we compare it with prostitution, the "exploitation of prostitution" is usually considered beyond trafficking to include all forms of pimping.
- **The online dimension of trafficking was explicitly introduced.** It is addressed both in aggravating circumstances and in prevention as well as investigation and prosecution.
- MS are encouraged to create **specialised units** within law enforcement services.
- The establishment of **shelters** and the possibility of compensation funds for the victims is added.
- MS now have to ensure that **victims can apply for both residence permits and international protection at the same time** (currently in many cases victims have to choose between the 2 procedures).
- MS need to promote **specialised training for professionals likely to come in contact with victims**, these training should be human rights based, victims centered and sensitive to "gender, disability and age" issues.
- MS need to put in place an **anti-trafficking coordinator (or equivalent), a national referral mechanism and an anti-trafficking action plan + provide data collection.**

CONTENT OF THE DIRECTIVE: ZOOM

KNOWING USE

Regarding the "knowing use" debate – Before the revision, MS "could" criminalise the intentional knowing use of a service by a victim of trafficking. Now, although strict liability was unfortunately ruled out both by the Council and the Commission, the EP obtained the following (limited) progress => **MS now "have to" criminalise the intentional use of a service by a victim of trafficking, and a list of indicators (non-exhaustive) is added to encourage judges to infer the "knowing" element** (eg: signs of control over the victim, proficiency in the use of the national language, signs of psychological or physical harm, etc.). It is possible that, in practice, the insertion of these objective criteria lead to more convictions, we will have to monitor that.

FORCED MARRIAGE

Both the Anti-Trafficking Directive and the VAW Directive have included forced marriage. It is defined in the VAW Directive as **a violation of women's fundamental rights and a form of violence against women and girls, recognising it as a serious crime that EU states must address**. In addition, it is recognised in the THB Directive that **there is a significant overlap between trafficking, sexual exploitation and forced marriages**. Those occur both with the involvement of transnational criminal activities (when a victim is sent to the country of origin/background to force her to enter into marriage, or, she is brought to Europe with such purpose), as well as within the EU and/or Member States' borders (when she is subjected to forced marriage without leaving the place of residence). Furthermore, once in a situation of forced marriage, the victim is at risk of (re)trafficking, including for the purpose of exploitation of her prostitution. **The European Commission will soon be producing an additional guidance that, we expect, will deepen the understanding of forced marriage as a crime under EU law and the steps states must take to eradicate it.**

NEXT STEPS FOR NATIONAL WOMEN RIGHTS ORGANISATIONS

- Organise **awareness-raising and educational campaigns** and workshops to further explain the directive to grassroots organisations and migrant women organisations in your own country, and notably raise awareness on the links between trafficking and **surrogacy**
- **Push for better data collection:** Hold your MS accountable regarding the data collection requirements laid out in the Directive. Only with such data will we be able to further advocate for effective responses to VAWG in the EU.
- **Lobby for the effective transposition / implementation of the directive at the national level.**
- Monitor the effect of the **“knowing use”** amendment.

NEW EU MIGRATION AND ASYLUM PACT



Legislative initiative

On January 29th 2020, the European Commission's new work programme was published. Under the fifth priority - 'Promoting our European Way of Life', the Commission announced its intention to launch a New Pact on Asylum and Migration. The Pact was presented in **September 2020**.



Amendments and negotiations

On **June 22nd 2022**, the Council adopted the main elements of the first stage of the European policy reform on asylum and migration. This followed in the wake of the Justice and Home Affairs Council meeting on June 10th, chaired by **French Minister Gérald Darmanin**, during which broad political support was shown for the content of this first step. **The declaration on a temporary solidarity mechanism, although at this stage non-committal, was signed by 18 Member States (Belgium, Bulgaria, Cyprus, the Czech Republic, Germany, Greece, Spain, Finland, France, Croatia, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania), as well as Norway, Switzerland and Liechtenstein.**

The same day, the European Parliament and the rotating Presidencies of the Council also signed a **joint roadmap**, declaring their plan to finish negotiating all the asylum and migration proposals currently on the table by February 2024, with the aim of having them enter into force by April 2024 at the latest.



Political agreement and adoption

On 8 February 2024, Coreper approved the provisional agreements. The files were formally adopted by the Parliament on April 10th 2024.



Transposition

The regulations are expected to start applying in two years time.

WHAT IS THE NEW PACT?

The Migration and Asylum Pact is a package of 9 legislations.

- **Recast of the CEAS's legislations:**
 - Asylum Procedures Regulation (to replace the Directive),
 - Eurodac Regulation
- **New legislations:**
 - Screening Regulation
 - Asylum and Migration Management Regulation
 - Crisis and Force Majeure Regulation,
 - Migration Preparedness and Crisis Blueprint
 - Recommendation on Resettlement and complementary pathways
 - Recommendation on Search and Rescue operations by private vessels
 - Guidance on the Facilitators Directive
- **The Pact also supplements legislations from the 2016 reform that were yet to be adopted:**
 - Reception Conditions Directive
 - Qualification Regulation (to replace the Directive)
 - Return Directive
 - EU Resettlement framework

WHAT IS THE NEW PACT?

THE ASYLUM PROCEDURE REGULATION aims at establishing a common procedure for international protection.

Following the negotiations, the key agreements are as follow:

- Introduction of a 6 months benchmark for a first decision and shorter time-limits for manifestly unfounded or inadmissible claims.
- **Faster border asylum procedures – which can last up to 12 weeks – can be applied**
- Asylum applicants whose claims are rejected should be returned in less than 12 weeks.

Will always be subjected to the border asylum procedure immediately after screening:

- people considered a danger to national security or public order
 - applicants who have misled the authorities by presenting false identity or nationality information
 - those from countries with asylum recognition rates below 20%
-
- Provision of free legal counselling to applicants in all administrative procedures should be available.
 - Unaccompanied minors will not be subject to border procedures, unless they present a security risk
 - 30,000 reception places are planned at the EU borders. The number will be increased gradually over the three years following the entry into force of the new rules.
 - Safe country concept can only be applied when the applicant cannot provide arguments against.
 - Member states will continue to use national lists of safe countries, but in the longer term there should be a convergence towards an EU list of safe third countries and safe countries of origin.

WHAT IS THE NEW PACT?

THE EURODAC REGULATION allows law enforcement at border controls to collect various data, to identify third-country nationals wishing to enter the EU, and determine the responsible Member State to process their application under the Dublin Regulation.

Following the negotiations, the key agreements are as follows:

- Introduction of biometric data: adding facial images to existing fingerprinting databases ; additional information, including name, surname, nationality and date and place of birth
- **Age of identification has been lowered from 14 to 6 years old**

THE SCREENING REGULATION seeks to implement a standardised pre-entry screening procedure for third country nationals, at the external borders of the EU.

- Preliminary health and vulnerability checks
- Registration of biometric data in the appropriate databases (i.e. fingerprint data and facial image data)
- Security check through a query of relevant national and Union databases (via the European search portal)
- Referral to the appropriate procedure
- The new screening rules will apply to people that do not fulfil the conditions to enter an EU member state, who were apprehended entering the EU irregularly outside border crossing points or disembarking following a search and rescue operation, or have applied for international protection at a border crossing
- A representative should be appointed to support unaccompanied minors in the screening process.
- Even if the unaccompanied minor is not represented, they should always have the right to apply for international protection.

WHAT IS THE NEW PACT?

THE ASYLUM AND MIGRATION MANAGEMENT REGULATION AIMS TO ensure sharing of responsibility through a new solidarity mechanism.

- All member states will have to contribute to helping EU countries recognised as being under migratory pressure
- A “solidarity pool” will be established every year, to which all EU countries will have to contribute with relocations and/or financial contributions – each country will be free to decide on the type of contribution, or a combination of them, they want to give.
- The minimum annual number for relocations from member states where most persons enter the EU or apply for asylum, to member states less exposed to such arrivals, is set at 30 000. and the financial contribution at €600 million ;
- These revised measures limit the possibilities for the cessation or shifting of responsibility between Member States and thus reduce the possibilities for the applicant to choose the member state where their claim is examined and are based on shorter time limits for sending requests and receiving replies ; requests for international protection and relocations will not include a choice to which member state they should be relocated.
- Asylum seekers will be required to apply in the member state of first entry or legal stay; whereby if certain criteria are met another member state may become responsible for dealing with that asylum claim:
 - family reunification cases will be prioritised and possible family links will be identified as quickly as possible ;
 - Additional criteria are: diplomas obtained in a member state, existing meaningful relations, and language knowledge ;
 - Free legal counselling on these criteria will be provided.

WHAT IS THE NEW PACT?

THE CRISIS AND FORCE MAJEURE REGULATION AIMS TO plan for a mechanism to be triggered when an exceptional situations of mass arrival amounts to a crisis.

- To be considered a crisis, the situation must render the asylum, reception, child protection services, or the return system of a given member state non-functional and may also have serious consequences for the functioning of the common EU asylum system.
- Regarding the decision-making and solidarity measures:
 - Member States will make a request to the Commission, which will assess the situation within two weeks and adopt a decision on the presence or otherwise of a crisis situation/
 - The Commission will make a proposal to the Council on solidarity measures and derogations, together with a recommendation establishing the categories of persons who should be entitled to *prima facie* protection.
 - **In crisis situations, the regulation plans possible derogations of the normal migration and asylum procedures, notably:**
 - The registration of asylum applications could take up to 10 days, with the border procedure extended for both asylum and return border procedures by an additional six weeks each.
 - **In situations of mass influx, the threshold for the border procedure will apply to applicants with up to 50% recognition rate/**
 - **In instrumentalisation situations, the border procedure will be applied to all arrivals.**
 - After an individual assessment, vulnerable persons and families with children under 12 years could be excluded from the border procedure.

NEW PACT: CRITICISM

- **Complex procedural rules aimed at limiting international protection:** The new pact introduces intricate rules designed to minimise the number of people who receive asylum in Europe. The reforms go in the opposite direction to the successful response to displacement from Ukraine, which demonstrated the value of light procedures, rapid access to a protection status, allowing people to work as soon as possible so they can contribute, and freedom of movement which allows family unity and a fairer distribution of responsibility across Europe.
- **Transfer of responsibility to non-EU countries:** An underlying objective is to transfer responsibility to countries outside Europe, even though 85% of the world's refugees are hosted outside Europe. The targets are the countries of the Western Balkans and North Africa, through budget allocation towards "border management capacity building in partner countries". In the past, this has manifested in failed agreements like **the EU-Turkey deal**, externalising the processing of asylum claims to third countries. The EU should not be the facilitator of such human rights violations.
- **Increased focus and mandatory procedures at EU borders:** 'Pre-Entry Screening' procedure (Screening Regulation), allows European authorities at EU external borders to channel irregular third country nationals towards either an asylum or a return procedure. This may lead to policy incoherence and **human rights abuses**. **Detention** outside the EU borders will be generalised. **Safeguards such as access to legal assistance or to an appeal will be reduced**. The procedures could last for a total of 24 weeks or even 40 weeks in "situations of crisis" during which asylum seekers and irregular TCN, including children and families, will be held in prison-like detention facilities modelled on the "**Closed Controlled Access Centres**" already operating in **Greece**.
- **Lack of protection of children / girls within families:** The Asylum and Migration Management Regulation grants children in families fewer safeguards than unaccompanied children on the assumption that having parents sufficiently protects them from harm.

NEW PACT: CRITICISM

- **Lack of clear definitions for "crisis" and "national security risks":** Vague definitions allow for broad and potentially abusive application of strict measures. The Pact risks to use 'crisis' procedures to enable pushbacks, and return individuals to so called 'safe third countries' where they are at risk of violence, torture, and arbitrary imprisonment. **The definition of a safe third country has been eroded as Member States will decide which countries meet the definition.** According to international law, for a person to be sent back to a country, there needs to be a connection between the country and the person and the country needs to meet certain protection criteria. However, what constitutes a connection is determined by national law, a Member State could decide that pure transit is a sufficient connection, and send migrants to countries such as Turkey, Tunisia or Libya where fundamental rights violations of migrants have been extensively documented.
- **In practice, people who are not granted asylum but who could be entitled to a residence permit on other grounds risk being deported, in clear breach of fundamental rights:** At the moment, at least twelve EU member states provide a temporary residence permit on medical grounds ; at least five have legislation granting special permits for undocumented victims of domestic violence; at least eight have mechanisms that can regularise children, young people or families ; and at least seven have dedicated procedures for stateless people. **In practice, the Pact fails to mention when and how any of these permits would be accessible during the new procedures, or that these other residence procedures exist.** As the grounds for these permits are not assessed during asylum procedures, hundreds of thousands of people risk either being issued a return decision.
- **The new EU asylum and migration pact allows for the detention of girls at borders for screening purposes:** Under the Crisis and Force Majeure Regulation, girls will face accelerated evaluation of their protection needs, often struggling to prove their age due to lack of documents and language barriers, leading to invasive examinations. Decisions about their well-being are made after superficial assessments without adequate support. Without child-friendly materials, many girls risk being denied asylum or other protections, increasing their vulnerability to violence, abuse, and trafficking. In addition, the pact's provisions for family reunification often exclude siblings.

NEW PACT: WHAT ABOUT MIGRANT WOMEN?

- **Women not explicitly recognized as a distinct group:** The pact fails to specifically address the unique needs and experiences of migrant women. The word “woman/women” is mentioned less than 10 times in 1,000 pages of legislation. Pregnant women are recognised as vulnerable.
- **Disparity in the granting of asylum seeking status will increase:** Today asylum claims success is 38.1% females vs. 61.9% males: Women are less likely to seek asylum, partly due to the system's failure to address their specific needs. – Far more asylum applicants will end up in border procedures and, through **the ‘legal fiction of non-entry’, will not be considered as on EU territory, which leads to lower safeguards and heightens the risk of human rights violations and pushbacks at borders. Such a transit zone creates a liminal legal space where states exert control by restricting access to rights for third-country nationals.** In the context of asylum, the fiction of non-entry inhibits asylum seekers’ mobility, access to rights and asylum procedures, and risks refoulement. In addition, automated systems may lead to biased or incorrect decisions in asylum claims processing. **The decreased access to legal help, information, specialised services, translation during speedy border procedure will likely worsen the existing gap between women’s and men’s successful asylum claims.**
- **Screenings do not account for the psychological and physical state of female migrants, leading to potential discrimination.** Lack of consideration for psychological and physical state ; no specific training on women’s needs ; Inadequate access to female agents, legal support, and NGOs
- **The return policies do not adequately consider the heightened risks for women in their home countries.**

NEXT STEPS FOR NATIONAL WOMEN RIGHTS ORGANISATIONS

- Push for women's rights sensitive training for all screening agents ; Provide training and resources to frontline workers and volunteers ; Equip those working with migrants with the knowledge and tools to support women effectively.
- Advocate for measures that guarantee women can access women support services, linked with other frameworks such as the Istanbul Convention.
- **Monitor and report on the impact of the Pact on migrant women: Conduct continuous assessments and publicise the effects of the new policies on women.**
- Collaborate with other organisations to provide support at the borders
- Raise awareness about the unique challenges faced by migrant women
- Lobby for amendments to the Pact to include provisions specific to women: Advocate for changes that explicitly address the needs of women and girls.
- Develop support networks and resources tailored for migrant women: Create targeted programs and resources to help migrant women navigate the asylum process.
- Push for governments to agree on **definitions of 'crisis situation', 'security risk' and 'safe country'** that are as protective as possible for migrants, in particular migrant women and girls.

- NEW DIRECTIVE ON COMBATING VAWG AND DOMESTIC VIOLENCE:
[HTTPS://EUR-LEX.EUROPA.EU/LEGAL-CONTENT/EN/TXT/PDF/?URI=OJ:L_202401385](https://eur-lex.europa.eu/legal-content/en/txt/pdf/?uri=OJ:L_202401385)
- ENOMW'S AMENDMENT PROPOSALS ON THE VAWG DIRECTIVE:
[HTTPS://WWW.MIGRANTWOMENNETWORK.ORG/2023/04/19/ENOMWS-WORK-COMBATING-VIOLENCE-AGAINST-WOMEN-AND-DOMESTIC-VIOLENCE-DIRECTIVE/](https://www.migrantwomennetwork.org/2023/04/19/enomws-work-combating-violence-against-women-and-domestic-violence-directive/)
- ENOMW'S EXPERT STATEMENT ON THE VAWG DIRECTIVE:
[HTTPS://WWW.MIGRANTWOMENNETWORK.ORG/2024/02/27/ENOMW-STATEMENT-ON-THE-EU-DIRECTIVE-ON-VIOLENCE-AGAINST-WOMEN/](https://www.migrantwomennetwork.org/2024/02/27/enomw-statement-on-the-eu-directive-on-violence-against-women/)
- ENOMW'S EXPERT STATEMENT ON THE ANTI-TRAFFICKING DIRECTIVE:
[HTTPS://WWW.MIGRANTWOMENNETWORK.ORG/2023/05/02/ENOMW-SUBMISSION-REVIEW-OF-THE-EU-ANTI-TRAFFICKING-DIRECTIVE/](https://www.migrantwomennetwork.org/2023/05/02/enomw-submission-review-of-the-eu-anti-trafficking-directive/)
- ENOMW'S EXPERT STATEMENT ON FORCED MARRIAGE:
[HTTPS://WWW.MIGRANTWOMENNETWORK.ORG/2024/04/25/FORCED-MARRIAGE-EUROPEAN-CRIME/](https://www.migrantwomennetwork.org/2024/04/25/forced-marriage-european-crime/)
- ENOMW'S STATEMENT EU ASYLUM AND MIGRATION PACT THROUGH THE EYES OF A WOMAN:
[HTTPS://WWW.MIGRANTWOMENNETWORK.ORG/2020/12/18/MIGRATION-PACT-WOMAN/](https://www.migrantwomennetwork.org/2020/12/18/migration-pact-woman/)

RESOURCES