

CEAS Working Group – 14 February 2023

15:00-17:00 – Remote meeting

42 participants present

Introduction

The CEAS Working Group meetings aim at exchanging on the state of play of the negotiations on the Pact. Through the Working Group, **ECRE** presents its work on the legislative proposals and provides relevant information collected through its meetings with policy-makers in Brussels. Members are encouraged to pro-actively contribute to the exchange and to share their insights, in particular those working at national level given their proximity with national Ministries and Parliaments.

The recent extraordinary Council meeting and its **conclusions** will be discussed in detail during the External Affairs Working Group, so it was not a focus of the CEAS WG meeting. In case you are not currently a member of the group and would like to join, please contact Josephine Liebl at jl Liebl@ecre.org.

Part I – Updates on Pact files

ECRE provided a brief update as to the latest developments at the EU level regarding Pact negotiations, highlighting how negotiations are going at a significantly faster pace when compared to the previous months. The general timeline is the following:

- ❖ On the EP side, the objective is to approve all files by spring; the first file to be voted will be Screening, which would be followed by RAMM and Crisis.
- ❖ It appears that S&D reached an agreement with Renew and the EPP, at the basis of which would be the approval of RAMM in exchange for Screening. The current aim is to vote in LIBE by 16 March, and present the files in Plenary in April.
- ❖ APR is moving more slowly, there are more controversial points, and no specific date for a vote at the moment. Even for RAMM and Crisis, a vote by mid-March might be too optimistic.
- ❖ Internally at the EP, there seems to be consensus on the idea that, if the Council does not reach a General Approach on all remaining Pact files by summer, they would stop negotiations, as they are still supporting the “package approach”. ECRE expressed doubts regarding the likelihood for the EP to maintain this position if most files – even if not all – were to move forward in coming months. The Council expressed the position that flexibility is needed for what concerns deadlines, especially considering the trilogues on Screening did not start for the moment since the Parliament still did not vote on the file.

- **Update on files negotiations on the EP side**

Screening

The EP aims to vote in LIBE on 2 March, and have it discussed in plenary with or without a vote on March 13-16. Outstanding issues:

- ❖ Surveillance and data protection;

- ❖ Detention: initially, the rapporteur wanted to go in with stronger standards of protection but because of the recent coalition around the RCD, the latest agreement is that detention will be defined as per RCD. This might be an issue for groups like the Greens, but the rapporteur does not believe MS will try to lower those standards.
- ❖ Legal fiction of non-entry: at first, the rapporteur wanted to introduce an exception for asylum applicants, currently the compromised text is that MS 'may' apply the legal fiction. The key point for the rapporteur is that this should remain a 'may' clause, and the legal fiction does not become mandatory. From the EPP, the current line is that no compromise can be reached unless the legal fiction of non-entry is included as mandatory, even though many MS (Med5, BG, HR) have contrasting interests. **ECRE** reminded members of the working group of the advocacy brief shared on the matter, intended as the last advocacy push to avoid the legal fiction becoming a mandatory part of screening procedures.

JRS Europe highlighted that, although they agree that the Council should not lower the detention standards of the RCD, the original Screening proposal contains no reference to the RCD; the Council will have to agree to include such a reference, which is not granted, especially since RCD only applies to asylum seekers. It is then important to make this reference a red line for the EP. **ECRE** added that there is an ongoing discussion on the same standard for Returns; it is then crucial to have a specific reference. **CCME**, through recent meetings with the EPP, reported there is still a split on this issue among MS, and it would as such be useful to scope which MS can be influenced on the point.

Crisis Regulation / RAMM

The files now seem to be strongly interlinked. Before, there was agreement between the Left, S&D and the Greens on specific red lines, but it does not seem that S&D is sticking to these; the Greens reported having been excluded from various meetings that are taking place between EPP, Renew and S&D. It appears confirmed that an agreement between the main groups in the EP has been reached, with the objective of making negotiations move faster. Advocacy efforts will be directed at S&D members, with potential allies on specific topics: it is clear they will not agree to stop everything, so we need to focus on specific red lines that cannot be crossed.

The main point of the agreement between EPP and S&D is an approval of the Crisis file (in the version prepared by LA) in exchange for S&D not adopting strong positions against some elements of RAMM. Outstanding issues:

- ❖ The text might incorporate derogations being pushed for by the right groups, and this is all the more problematic given the Council's possible interest in merging the Crisis and Instrumentalisation Regulations.
- ❖ Force majeure is still included in the text.
- ❖ Prima facie recognition in its current format is not that of UNHCR. It would not grant higher protection than TPD, and repeal of TPD is still on the table.

ECRE's main advocacy points: do not repeal TPD, change the definition of prima facie recognition, delete force majeure provisions, and avoid Instrumentalisation elements – and derogations in general – being included in the Crisis compromise text.

Regarding RAMM:

- ❖ On S&D's side, Bartolo (one of the shadow rapporteurs) does not seem to be following closely and S&D as a whole has been weakened by QatarGate, so they are not going to take a strong position easily.

- ❖ Discussions are ongoing in the EP. The Greens fear the SAR mechanism will be deleted; from other meetings with S&D assistants, however, it appears that the SAR mechanism will continue to be included, but in a diluted version, especially for what concerns the amount of relocations.

ECRE's position is that, if RAMM continues to move as a whole, there needs to be a strong solidarity mechanism that does not include external capacity building and focuses on relocation, as well as an improvement of current Dublin rules (amendment of first entry principle and extended family definition).

APR

It could be the deal-breaker file. There is currently no agreement.

- ❖ There is currently no approval of a mandatory border procedure in APR in the EP.
- ❖ Continued debate on wording regarding whether an appeal would have suspensive effect. This is one of the only remaining S&D red lines.

Diakonie Germany asked for details about the situation with the appeal. **ECRE** explained that although S&D feel very strongly everything needs to be approved, this is still a potential deal breaker since not having a suspensive appeal in a mandatory border procedure would mean that remedy could be offered only in the country of return, which would inevitably jeopardize access to asylum in the EU. However, were this to become the last element impeding a compromise, it is not clear whether S&D would maintain this stance.

JRS Europe highlighted that several technical meetings are cancelled, and in general the work is going quite slowly on the side of the rapporteur. **ECRE** confirmed that for now our focus is on RAMM and Crisis given their pace as opposed to APR.

ECRE remarked that more targeted advocacy activities will be developed in the two coming months, depending on developments in the negotiations; **ECRE** also highlighted being happy to support advocacy activities on Pact carried out at national level.

- **Development on Pact files under the SE presidency**

Update from ECRE Swedish members

FARR provided information obtained during a regular biannual meeting with the Ministry on migration issue, which contained a short session on EU matters.

- ❖ The Ministry highlighted that their position was to be the “honest broker”, and maintained the position that the Pact will be approved before the end of the EP's legislature.
- ❖ SE does not feel Instrumentalisation is dead; to the contrary, there are ongoing discussions to merge Crisis and Instrumentalisation. When asked about the initiating method for Instrumentalisation, the Ministry said it would have to a decision of the EC and in the Council.
- ❖ The state of APR discussions was not mentioned.
- ❖ **FARR** obtained the names of the officials responsible for the files, which can be useful moving ahead.
- ❖ On a positive note, the Minister took into account the criticism about the language used to describe the general situation of people seeking refuge.

- ❖ Regarding relocation, the Ministry confirmed they wanted much more permanent rules on the matter, rather than something on a voluntary basis, but they did not expand on how they would be pushing for that in practice.
- ❖ The head of the Swedish Migration Agency, also member of the Management Board of the EUAA, will end his mandate as has not been renewed by the government. This can be a significant difference as the SMA also appoints advisors to the government on specific issues.

Update from ECRE

Before the meeting, **ECRE** shared two internal documents, one summarising which articles of APR are covered by the Partial General Approach reached by the Council, the other highlighting key issues on Pact – at the current stage of negotiations - and main related advocacy points.

Regarding Pact files at the Council level:

- ❖ There have been discussions of a potential merger between Instrumentalisation and Crisis Regulations. This will probably be a discussion towards the end of the SE Presidency; MS are not against it in principle; as it is unlikely that the EC would present a new proposal at this stage, that might mean that some derogations from Instrumentalisation are incorporated in the Crisis text via amendments, but would be less far reaching than in the original Regulation.
- ❖ RAMM: there is currently a [compromise text](#); for the moment, only articles 56 and 57, related to relocations, appear to have been discussed. The SE presidency text contains some relevant changes compared to the EC proposal: mainly, there is now only one solidarity mechanism for both migratory pressure and disembarkation; solidarity contributions would focus mostly on relocations and financial contributions, but the amount of relocations is still not set. This could be a deal breaker for the Med, depending on how much is asked for them in return (mandatory border procedures, etc). Currently, the RAMM solidarity mechanism references Dublin offsets, i.e. the possibility to diminish Dublin rules for border MS in case of migratory pressure, which would be used as leverage with the Med5.
- ❖ Until now, the asylum WG has been discussing mainly RAMM and the APR articles on relocation. On Thursday 16 February, there will be exchanges on APR during a [SCIFA meeting](#), focused on the issue of border procedures.

Next steps: **ECRE** will let members know if there are any urgent activities, especially regarding Screening, and will continue to share advocacy briefs. In the coming months, **ECRE** will develop specific advocacy activities targeting the upcoming ES and BE presidencies.

JRS Europe indicated having had exchanges with members of the ES government and confirmed good contacts can be established.

Caritas DEU highlighted that, German officials seem not to have high hopes for results on Pact under SE presidency, and rather see possibilities with the ES presidency. They also inquired about the EC's "less for less" proposal regarding repatriation and visa policies. DE was of the few States commenting after the proposal that this is the wrong approach, it should rather be, "more for more", more visas and international aid to take people back. DE has recently concluded such a deal with India. ES is also great example for such agreements. **Caritas DEU** thus enquired as to whether **ECRE** indicated the topic will be discussed in depth during the External Affairs Working Group meeting which will take place on 20 February. ECRE also mentioned that PT and LU also came out saying they disagree with Von der Leyen's approach. There is no information as to FR's position, nor ES, both of which would be highly relevant.

IRC inquired about Von der Leyen's letter calling to implement screening, border procedures and the safe third country concept as pilots while the agreement is pending. **Caritas** also inquired about the Dublin roadmap mentioned. **ECRE** remarked it will welcome information on pilot schemes coming from interested countries. For what concerns the Dublin roadmap, it was agreed on during the **JHA Council** meeting held in December, and is presented as an agreement between Member States, the Commission and the EU Agency for Asylum (EUAA) to improve and ensure proper and better implementation of transfers under Dublin III in all Member States.

- **EC January Infringements package**

The EC recently announced the opening of various **infringements proceedings** for failure to transpose in a fully conform manner the provisions of the RCD (Belgium, Greece, Spain and Portugal) and of the QD (Greece, Portugal and Finland). **ECRE** requested members who work at the national level whether they had further information on the proceedings, and offered support in case they were planning dedicated advocacy activities.

ASGI announced the plan to try to make the EC open an infringement procedure against IT on access to the asylum procedure and on reception, as the situation is now quite dramatic and there is no political will at the national level to solve it.

Fenix stated that they do not yet have the full picture regarding the infringements, but some elements were leaked in Greek national **media**. On the RCD, the procedure is mainly in relation to the detention like situation during reception and identification procedures, as administrators of hotspots or Closed Controlled structures can automatically restrict the freedom of movement of new arrivals in the structures for five days with the possibility of extension up to 25 days, whereas according to the Reception Conditions Directive, detention must be applied according to the clearly defined, exceptional circumstances in the Directive, necessary and proportionate. The letter also indicates that Greek Law 4939/2022 incorrectly transposes the Directive in relation to the detention of unaccompanied children and vulnerable groups; on the QD, the infringements concern access to social rights after receiving protection. The Government's arguments are that 1. the European authorities' interpretation of Greek law is incorrect and that 2. the situation in GR is different than in other MS and rules cannot be applied in the same way. The next step in the proceedings is expected in mid- to end of March, when Greece should submit their response.

CPR did not have any details regarding the infringement proceedings against PT.

Part II – Updates related to the EU response to the displacement from Ukraine & call for input on the national plans related to transitioning out of the TPD

ECRE presented the ongoing work on displacement from UA:

- ❖ A **Policy Note** on Pendular Movement to and from Ukraine
- ❖ Updated **advocacy messages**
- ❖ The **infosheet** has been recently updated and will be updated monthly until end of May. In case of any feedback of information, please contact Iryna at: ihnasevych@ecre.org.

ECRE also reported information from bilateral exchanges with the EC:

- ❖ Extension of TPD until 2025 is expected. This might require a specific vote in Council so it is unclear when exactly the information will come out but likely this fall.
- ❖ The idea of an ad hoc expert group attached to the solidarity platform, with UA civil society present to inform policy making regarding TPD and the general response to the displacement, was positively received.
- ❖ The expected report on implementation of TPD will not be a comprehensive overview of the state of implementation.
- ❖ There are EC officials working on migration related issues assigned to and present in each MS. **ECRE** will follow-up to obtain a contact list to share with members.

ECRE's current priority relates to transitioning out of TPD. From the EC, there is apparently a general approval that this should be discussed but not much is happening. ICMPD is apparently consulting MS to see what their strategies are but information could not be obtained. ECRE is currently analysing frameworks available at the EU level, including labour frameworks, the recast of the EU long term residence directive. The EP report on long term residence includes TPD holders as eligible. One potential outstanding issue is the criterion of uninterrupted stay, although the rapporteur has assured this will not be impacted by TPD holders' freedom of movement and possibility to return to UA.

- **Questions from and exchange with members**

Guiding questions:

- ❖ What are the options available for current holders of temporary protection upon expiry of the TPD in your respective country (e.g. application for asylum or other forms of protection, labour migration frameworks)?
- ❖ Is there a specific strategy for transitioning out of the TP being developed in your country?

FARR reported that this was discussed with the Ministry. When TPD was transposed into SE law, it was decided they would have the opportunity to stay for a further 2 years, with back and forth movement allowed. This has not been repealed. Another discussion in SE regards their status standards, as currently TPD beneficiaries have the same reception conditions as asylum seekers, which entails a low level of income and rights, no access to language courses, but expected integration including through employment. There are discussions to, after 1 year, give them another status with greater rights.

The **Swedish Refugee Law Center** added that although TPD beneficiaries may apply for asylum, the Swedish Migration Agency currently does not examine such asylum claims.

Diakonie Germany highlighted that the standards are high in Germany, as TPD beneficiaries have in several respect the same rights as citizens. There is no particular news about transitioning out, however given the money investment into their integration, one can hope they will have good options. These standards have also been the opportunity to advocate for raising standards concerning asylum seekers to the same level. There is positive practice in Berlin, where the obligation to stay in first reception centres was lifted, and this does not even require a procedural decisions from the authorities. Thus the idea of private housing is shifting from only applying to the persons displaced from UA to a broader level.

OPU highlighted that in the CZ they are advocating for the possibility to apply for another type of long-term permit, but the Ministry does not currently want to take a position.

FARR also mentioned that SE has the worse reception conditions for UA amongst the Nordic countries. Regarding private housing, that is currently an option for asylum seekers in SE and an option chosen by around 2/3 of them, but the government wants to impose housing in Migration Agency buildings for the entire procedure, a much more repressive stance. Although there are private housing examples of overcrowding and poor living conditions, there are also many positive examples.

ECRE would appreciate receiving any news, please be in contact with Viktoryia at: vvaitovich@ecre.org.

AOB and conclusion

ASGI inquired about rumours of States are taking special measures for Syrians due to the earthquake, such as special visas, extending protection at the EU level for Syrians fleeing from the war and the earthquake, particularly in DE.

JRS Europe stated that in BE, the Secretary of State **announced** that the Migration Office have been asked to fast track visa applications for family members, but it remains very unclear.

Diakonie Germany announced that two relevant ministries had announced the decision to give family members the possibility to get visas if they are coming from earthquake zones, for both Syrians and Turkish persons, but there is a guarantee prerequisite. Berlin has also stated that it would accelerate ongoing family reunification procedure and visa processing. Hamburg wants to give all Turkish relatives a 3-month Schengen visa but also with a guarantee prerequisite.

- ❖ ECRE's info sheet on TPD implementation will be updated monthly until May; ECRE invited members of the working group to share their inputs at: ihnasevych@ecre.org;
- ❖ ECRE recently released an AIDA **comparative report** on Family Reunification;
- ❖ A report on the AIDA fact-finding mission to Poland should be published by early March;
- ❖ By the end of May, all AIDA reports will be published; the 2022 update will include a section dedicated to Temporary Protection;
- ❖ ECRE is planning an update to the **2021 Policy Note** on the EUAA, and is thus collecting input on the agency: fundamental rights, external cooperation especially capacity building, the monitoring mechanism. Members might also have priorities at the national advocacy level that they would like to see reflected. Please be in contact with Eleonora at: etesti@ecre.org.