



**BRIEFING ON THE NEW PACT VOTES:
Screening Regulation
Asylum Procedures Regulation**



Border Violence Monitoring Network

Introduction:

In September 2020, a New Pact on Migration and Asylum was put forward at the proposal of the European Commission. It was clear from the start, that the proposed changes to migration management and the asylum system under the New Pact were deviating further away from best human rights standards for people on the move, and contrary to recommendations put forward for years by civil society organisations. Instead, it would set the stage for a [lowering of standards and scrapping of safeguards](#). Today, the European Parliament will vote on four key files from the Pact: the [Screening Regulation](#), the [Asylum Procedures Regulation](#) (APR), the [Regulation on Asylum and Migration Management](#) (RAMM), and the [Crisis Proposal](#). The proposals, as they stand to be voted on today, mean two things in reality for people seeking international protection: [more detention, faster deportations](#). **The individuals who will be casting their votes on the current files hold a significant responsibility in their decision-making process. Their choices will endorse a system in which individuals seeking international protection may be detained without due process, some as young as 12 years old. The rapid returns of such individuals could result in a failure to provide adequate protection, leaving room for potential violations of non-refoulement, as well as the right to protection from torture and other inhumane treatment.** In the event of a passive position from important members of the European Parliament (EP), things only stand to deteriorate further in the trilogues where the Commission will pressure to reinstate some of their most problematic provisions and push out the few safeguards that have been included through Parliamentary negotiations.

De facto detention:

The Screening Regulation:

Taken together, the Asylum Procedures Regulation (APR) and the Screening Regulation will result in systematised *de facto* detention at the borders of EU Member States (MS). The Screening Regulation establishes a pre-entry screening process for each person arriving at an EU border irregularly, including following disembarkation after Search and Rescue (SAR). The pre-screening procedure applies also when a person is “found” within the territory of any EU MS where there is, allegedly, no indication that they have crossed the border “in an authorised manner”, a provision that legalises and [permits racial profiling](#). The Regulation relies on the [legal fiction of non-entry](#) where a person who is in an EU MS is “legally” considered to not have entered the territory. This fiction is created by the proposed Regulation codifying that being in a screening centre on EU soil does not automatically mean persons have entered the EU. Not only is this a legal fiction that risks placing EU law in variance with human rights jurisprudence and international law as states cannot decide to renege part of their territory,¹ but it also creates uncertainty about the rights of those undergoing the screening process, particularly: the right to asylum, to appeal, to legal aid, and to liberty. Instead of opting for an approach that respects international and Union human

¹ See for example *Amuur v. France* 19776/92. Judgement 25.6.1996; *Hirsi Jamaa and Others v. Italy* [GC], Application No. 27765/09 where the ECtHR found that Italian authorities had unlawfully intercepted 23 persons and that the applicants were within the jurisdiction of Italy for the purposes of Article 1 of the Convention.

rights standards, there is a heavy reliance on detention procedures that stand in direct contradiction to the [Reception Conditions Directive](#) (RCD), which clearly states that a person cannot be detained on the sole basis of his/her status as an asylum applicant, and that any detention decision must follow an individual assessment and only be applied when other less coercive alternative measures have been exhausted.

Parliamentary negotiations have ensured the file is in line with international human rights safeguards by explicitly adding an article that states from the moment a person expresses the wish to apply for asylum, they are considered an applicant of international protection and the RCD provisions apply. However, this is not much by the way of safeguards and examples from the last eight years have shown how this has played out in reality and how safeguards outlined in the RCD have not been sufficient in protecting the rights of people on the move. There are extremely worrying similarities between the proposed screening centres and [Hungarian transit zones](#), against which the European Court of Human Rights (ECtHR) issued several interim measures, one on the account of starvation of people who were within the transit zone. In addition, the Court of Justice of the European Union [ruled for the abolishment of transit zones](#), meaning there is precedent that such measures violate human rights. Furthermore, [data collected](#) by the Border Violence Monitoring Network has proven that detention often results in a lack of access to information, legal support, translation and consequently a denial of the right to asylum. The systematised use of detention facilities is a precursor to inhumane and degrading treatment, their closed structures often obscuring and normalising violent practices toward people on the move. In this landscape, arbitrary detention practices using informal sites may also emerge, a method applied by Croatian police officers, who have on several occasions [detained people in a garage](#) in Korenica, without access to basic facilities. [In one case](#), minors as young as 12 were held in a room whilst Croatian border officers beat them with their hands, feet and batons. One testimony described the room as approximately 2mx4m and located at the bottom of a single flight of stairs directly below a border crossing point.

Asylum Procedures Regulation:

Perhaps even more worrying than the proposed Screening Regulation is the APR amendments to the [Asylum Procedures Directive](#) adopted in 2013. The file aims at creating an obligatory 12-week asylum border and return procedure in all MS with an aim to channel people directly from asylum to return procedures. This essentially entails all international protection applicants being subject to a deprivation of liberty upon application, and the fast-tracking of procedures that results in little space for effective remedy and appeal. As it stands in the file to be voted on today, the border procedure will not be obligatory and stands as a 'may' clause with unaccompanied minors (UAMs) being excluded from the procedure. Yet, the overall file remains deeply problematic and will have devastating consequences for people on the move. What this will mean in reality is systematic detention in camps at the borders in frontline MS, essentially [a repackaging of the failed hotspots approach](#). Not only has this been proven to exacerbate the possibility of violence and trauma for applicants, but the short time limits of accelerated border procedures makes the adequate provision of access to rights extremely challenging.

On top of this, the Regulation provides for children as young as 12 to be detained with their families, and for vulnerable applicants to also be subject to the border procedure. This is in spite of extensive evidence proving that detention can [never be in the best interest of the child](#). Furthermore, in the APR file there is no suspensive effect of appeal even at the first level, meaning that individuals could be returned to a country in which they are at serious risk of harm, before a full assessment has been made as to whether it is safe for them to be returned. This is in direct contravention of the right to non-refoulement - allegedly the central pillar of the EU's asylum system - placing the Regulation at odds with international protection mandates including the 1951 Geneva Convention on the Status of Refugees. It is not only in this sense that the Regulation stands in contradiction with international law, within the file it remains possible to refuse to examine an application for asylum on the merits in a border procedure and to look only into the admissibility of the claim based on Safe Third Country and First Country of Asylum Principles. The implication is that during the initial assessment of the asylum seekers' applications, their potential eligibility for asylum in other countries or the possibility of their safe expulsion to such countries will be taken into consideration first. In a [new draft General Comment](#) published by the Committee on Enforced Disappearances (CED) of the United Nations (UN) it states that:

“Adherence to the principle of non-refoulement requires States parties to ensure that each person’s case is examined individually, impartially, and independently by competent administrative and judicial authorities, in conformity with international due process standards. This should also include an assessment of whether there is a risk of the person being further transferred to a third country where they may be subjected to enforced disappearance (“chain-refoulement”). Lists of “safe countries” must not be used as an alternative to individual assessments of risk. Moreover, any diplomatic assurances must be evaluated with utmost care. A decision to return any individual after such an assessment must be communicated to the migrant in a language they understand and be subject to an appeal before an impartial authority, with suspensive effect.”

In line with this, the APR does not only stand in contravention with the 1951 Geneva Convention but, if adopted, will violate international law as mandated by the UN's Convention for the Protection of All Persons from Enforced Disappearance

The best way to consider how these provisions will play out in practice is to turn to the very current and real example of Greece, where *de facto* detention and streamlined reception and return facilities have a devastating impact on the lives and rights of people on the move. In Greece, Closed Controlled Access Structures (CCACs) funded by the EU have become a pilot project that demonstrates how detention structures for the reception of applicants for international protection work in reality. The Samos CCAC is the first of its kind and cost the EU taxpayer [43 million EUR](#) to construct, using the Asylum, Migration and Integration Fund (AMIF). Samos is one of five CCACs located on the five hotspot islands of Greece, thus restricting people's freedom of movement twice over: once in the centre and secondly on the island from which applicants are prohibited leaving once their application is lodged. [A recent report](#) from BVMN member organisation I Have Rights evidences that the nature and conditions of the CCAC constitute systematic breaches of Article 5 of the ECHR and systemic inhuman and degrading treatment under Article 3 of the ECHR. The factual circumstances of the CCAC amount to systemic *de facto* and arbitrary detention and the nature of the closed structure facilitates an evasion of the implementation of legal

safeguards. Those held in the CCACs, where their asylum applicants are being processed, are therefore subject to unlawful deprivation of their liberty and left without access to safeguards.

Under the APR, individuals whose applications are rejected after this initial phase would be directly streamlined into return facilities. Again, we turn to the Greek example of Pre-Removal Detention Centres (PRDCs), the subject of two recent reports by [BVMN](#) and member organisation [Mobile Info Team \(MIT\)](#). Return procedures and PRDCs deprive individuals of their right to liberty in order to carry out their removal, despite the number of formal deportations steadily declining since 2018, raising questions regarding the reasonable prospect of removal and the proportionality of detention as a measure in these cases. Although the [suspension of readmissions to Turkey](#) has been ongoing since March 2020, numerous individuals continue to be detained based on the notion of inadmissibility due to the Safe Third Country concept.

On top of the shaky legal basis for detaining people in lieu of removal, the conditions in which they are detained reveal a shocking reality. Based on 50 testimonies gathered by BVMN and MIT, respondents spoke of poor hygiene conditions, no legal assistance or possibility to appeal detention decisions, a lack of access to medical care - both physical and psychological. The BVMN report revealed physical violence in detention perpetrated by authorities as both extreme and systematic. 65% of respondents indicated that they had been subjected to violence by authorities or witnessed violence by authorities, with some detention centres reporting an 80% incidence rate. Taking the example of both the CCACs and the PRDCs into consideration, it is clear that the provisions laid out in the APR will lead to a reality across MS like the one we see in Greece today; where detention is built into the asylum process through every step, from registration to return, fundamental rights and safeguards are inaccessible to applicants, and individuals are subject to routine and systematised violence for the sole reason of seeking asylum or being a person on the move. There is plenty of evidence of the impact such measures have on people on the move from the Greek “pilot project” experience and how little impact it has on managing migration, but instead of learning these lessons, there is a move to codify the mistakes into Union law.

Conclusions:

For years, arbitrary detention has been a policy of individual MS such as Hungary and Greece, but with the New Pact this will rise to and be fortified at an EU level. The reality put forth by the files to be voted on today is one that legitimises an approach of *de facto* detention and holding people en masse in camps and closed structures at external borders. The inadequacy of this approach has been repeatedly shown since the so-called crisis of 2015, and was evidenced most tragically in [the fire in Moria](#) on Lesbos which left 13,000 homeless. This should have triggered an understanding across the Commission, the Council and the Parliament that there is a need for a radically different approach. Instead we see a fortification of detention provisions coupled with a renewed commitment to accelerated returns. The stage has been set for a regime that continues to systematically violate international and Union human rights law as laid out in the Geneva Convention and the ECHR, and an asylum regime that normalises violence and detention