## Regulation on Asylum and Migration Management (RAMM)

**The Parliament accepted all the key elements of the Council position. This is much worse than the current Dublin for applicants, but also for Member States of first entry.**

**Responsibility:**

- **responsibility will be 12 months for SAR and 20 months for irregular entry**

**Dublin Procedures:**

- **Timeline for Dublin transfers:** 6 months (against 3 months that the Parliament wanted)
- **Cessation of responsibility:** Council proposes new cessation ground (rejection in border procedure, then cessation after 15 months)
- **Persons who will move irregularly will be sent back to the first MS of entry with a "take back notification"** (instead of a "take charge request" now)
- **no inclusion of beneficiary of international protection in scope of Dublin criteria;**
- **Free legal counselling at administrative stage as in APR (not free legal assistance)**
- **Remedies:** Council did not want to codify case law;
- **Family unity is not safeguarded i.e. you will not be able if you have a sibling in another MS to be transferred to this MS and will have to stay in another MS:**

- Council did not accept siblings as part of the family definition;
- The Parliament managed to have at the last trilogue in article 16 the possibility to be reunified with family members who legally reside in a MS, going beyond the existing limitation to beneficiaries of international protection to:

    - holders of long term residence permits;
    - family member who was before beneficiary of international protection, but has later become a citizen of a Member State;.

**Solidarity:**

- **Search & Rescue:** EP wants earmarking (indicative share) of SAR (*Council wants may clause on this, EP shall clause*). **There will be no direct relocation of persons disembarked after SAR operation:** instead, a Member State that receives arrivals based on SAR will be able to be qualified as under "migratory pressure" and benefit from solidarity (that can be anything). A % of the pool will be dedicated to countries facing SAR.
- **Solidarity Contributions: Solidarity to frontline Member States could be financing fences or walls, or giving barbed wires to Member States facing large arrivals instead of relocation (equal value):**

    - the Parliament accepted the Council position that everything will be of equal value;

- People's solidarity could be relocation, and if not enough pledges for relocation, would transform into Dublin offsets (a MS would have to take responsibility for persons who moved irregularly to that MS, not being able to transfer them to first MS of entry);
- Solidarity could also be **financial contributions** to asylum, reception <u>but also to border management and operational support within the EU (BMVI)</u> **<u>or</u>** <u>operational support to third countries</u> "that may have a direct impact on the flows of the MS external borders", or in-kind solidarity contributions (containers for example but also border surveillance technology or barb wires). This financing is happening already, but now we moved to see this as solidarity. A new addition has been inserted to ensure that "funding to Libyan coast guards is not possible", when it comes to third countries (**limiting it to AMIF**: "*such actions in or in relation to third countries shall be implemented by benefitting Member States in accordance with the scope and objectives of the current Regulation and of the AMIF regulation*"). .

- **<u>Relocation:</u>** primary consideration to vulnerabilities including unaccompanied minors is important for Parliament.

**Governance:**

- **The whole governance system will be worse than the current Dublin: a nightmare bureaucratic scenario whereby the Parliament does not exist** (Commission recommendation/proposal followed by Council implementing Act setting out Solidarity Pool, EP wants shall clause). And totally undemocratic as Council wants even the Commission recommendation/proposal for the different forms of solidarity to be <u>secret</u> (classified as restricted). The reason for the document to be secret is because it would be a pull factor if numbers are known (statement from Johansson today). Parliament did not accept Commission document to be classified as restricted. This was not discussed again, no clear outcome on this.
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**Entry into force:** 24 months.

**Only positive achievement from Parliament:**

- **deleted relocation for returns as form of solidarity;**
- **diplomas as responsibility criteria:** Council could agree to COM original proposal, not to the EP proposal provided that the application is registered less than 6 years after the diploma or qualification was issued & needs to be at least one academic year.

## Asylum Procedure Regulation

**The Parliament has accepted all the key elements of the Council position. There was no trade off in exchange of obligatory border procedure, not even free legal assistance and representation in border procedure (only counselling).**

**All the legal drafting could not be finalised but an agreement was reached on "the essential building blocks on the APR as a package". The agreement could not be on the final text.**

**Rights of the applicant:**

- **There will be no free legal assistance and representation at the administrative stage (not even in border procedure):** it will remain as in the current acquis at appeal stage. **Council only agreed to free legal counselling to all applicants at the administrative stage** financed by EU funds and asked even things in exchange (20% scope border procedure, adequate capacity and annual cap).
- **No obligation for the determining authority to be one of the authorities to register applications for international protection** (only a possibility "may" clause).
- **No automatic suspensive effect** except for inadmissibility decisions based on safe third country + for unaccompanied minors in border procedure

**Border procedure:**

- **Fiction non-entry (as in screening):** this de facto would allow Member States to detain applicants in border procedure or restrict movement (as in islands).
- **All Member States will have the obligation to have a border procedure for the following obligatory grounds:**

- **threshold: 20% recognition rate**
- **if an unaccompanied minor or adult is a security risk**
- **persons misleading authorities** (taking APD definition)

- **Member States are able to deem applications inadmissible based on safe third country principle (optional).**
- Parliament accepted the approach of the Council whereby the **obligatory grounds (except security) in the border procedure cease to apply when a MS reaches its maximum adequate capacity .**
- **no free legal assistance and representation (only free legal counselling as for normal procedure)**
- **all families with children will be in border procedure, they will not be generally excluded,** it was agreed instead that:

- there will be "prioritisation when capacity reached"**:** that would mean that if a MS reaches its adequate capacity or is about to reach adequate capacity, they will not be put in border procedure ("deprioritisation") & if they are in border procedure, their applications will be

examined as priority ("prioritisation")

- the role of the EUAA would be strengthened in context of monitoring reception conditions when it comes to families and minors and when grounds that MS not complying, COM intervenes making a recommendation to MS concerned so that MS would discontinue border procedures to families and minors (not obligatory as only recommendation and not implementing decision):

  The wording proposed by the COM not yet agreed tonight (needs further work): "*Where on the basis of information obtained in the framework of monitoring by EUAA, the COM has grounds to consider that a Member State is not complying with the RCD requirements, it shall adopt a recommendation regarding the suspension of the application of the border procedure to families with minors. The Commission shall make this recommendation public. The Member State concerned shall take into account and act*…"

- **Council accepted the monitoring mechanism in border procedure** on the basis of the same conditions as in screening or any other national monitoring + role of EUAA for monitoring.

- **Only exclusion in border procedure:**

- unaccompanied minor, except if security risk;
- the necessary support cannot be provided to applicants with special reception needs, including minors, in accordance with Chapter IV of Directive XXX/XXX/EU [Recast Reception Conditions Directive];
- the necessary support cannot be provided to applicants with special procedural needs in the locations referred to in […]Article 41f;
- there are ***relevant*** medical reasons for not applying the border procedure***, including mental health reasons;***

**Safe third country:**

- Kept the **possibility of EU - third country agreement but with article 218 TFEU - EP can veto** (but need connection links)

- **The notion of "effective protection" will be limited** (access to health care and education is mentioned following EP demands but "under the conditions generally provided in third country")+, **access to labour market not mentioned (**apparently to be covered in a recital**)**
- There will be **coexistence of national and EU lists of safe third countries** with only impossibility to put back a country taken off EU list to national list during two years ;
- Geographical limitations: **EP accepted the possibility of only parts of a safe third country being safe**;
- **Burden of proof remains on the applicant** to prove the safe third country is not safe for him/her.

**Only positive points:**

- On connection links, transit will not be sufficient;
- Automatic suspensive effect of appeal for inadmissibility decisions based on safe third country + for unaccompanied minors in border procedure;
- Deletion of the possibility to return to safe third country solely with consent of person (there was no need for connection links);
- Multidisciplinary age assessment;

**Screening Regulation** (* several points were not completely clear as what was finally agreed the way the discussions at the last trilogue were conducted)

**Guarantees for minors**

- EP amended COM proposal, aligning with EURODAC provisions & safeguards therein, Council agrees in principle (will work on technical level and then close line)

**Provision of the form to the subject of the screening**

- **form/information is solely*"shall be made available"*** (redact security check info & right to indicate incorrect information); it is therefore not ensured that the form is given, either on paper or electronically, to the person in a way that they can actually have it (hence, most probably only able to read it)

**Use of databases for the purpose of the security check**

- 19/12: EP made an additional effort with a compromise proposal: EP already gave direct access and now offers that, if there is a hit on a person in the databases on security related grounds (and all databases are included: SIS, ECRIS-TCN where they would have full access to the file if there is a hit and EES, ETIAS, VIS where the info would be limited to the parts relating to identification & biometric data and security grounds that resulted to the hit), then the form would clearly indicate that the person is identified as potential threat to internal security and then, in the next process (asylum or return), the competent Authorities, would further check in detail (this is in line with purpose limitation & data minimisation principles, as no decision is taken in screening and, hence, it is not relevant to have all info). **CN:insisted and managed to obtain its position:, once there is a hit relating to security threat, then screening authorities will have full, direct access to all data on the person in all databases**.
- "checking a threat for internal security", alignment with EURODAC

**Detention**

- General reference to detention provisions on Return Directive
- Recital on detention as last resort, and individual assessment & family unity

*Line 98d: 6e. The **relevant rules on detention set out** in Directive 2008/115/EC (Return Directive) shall apply during screening in respect of third-country nationals who have not made an application for international protection. (compromise here is to refer to "relevant rules" and not the specific Articles as Council insisted on limiting references to the conditions not the grounds of detention according to Return Directive)*

Council maintained the references to national law provisions

**Legal fiction of non-entry (Article 4)**

EP accepted Council's position on the issue: legal fiction linked with the implementation of two interlinked elements that need to apply at the same time:

- MS obligation not to authorise entry in the territory (Art.4) at external borders
- Obligation of persons to be available

{Council accepted not to mention "penalties for non compliance" }

**Monitoring of fundamental rights (Article 7)**

- **EP moved away from its ambitious mandate and, notably, lost the inclusion of border surveillance in the scope;**
- "May" clause for participation of international organisation and NGO's, overall wording which leads to restriction of access of those conducting the monitoring
- CN proposed, and was accepted by the Rapporteur, to add the part in bold in paragraph 2 : "The independent monitoring mechanism shall cover all activities undertaken by Member States ***in implementing this regulation***" instead of " **in screening**" as proposed by the EP.

**Screening within the territory (Article 5)**

*(Rapporteur linked the offer to compromise on the compromise of CN to all previous open issues but at the end gave in with majority of EP, LEFT did not support)*

**Agreed on Council proposal allowing for screening to persons within the territory**, without any safeguards against racial profiling. In addition, the text foresees that *no screening would take place "if they are sent back immediately*" (**a situation that is completely out of any EU legislation**) & foresees that a MS *"may refrain from applying the screening if a third country national staying illegally on their territory is sent back, immediately after apprehension, to another to another Member State under bilateral agreements or arrangements or under a specific cooperation framework. In this case, the Member State to which the third-country national concerned has been sent back shall apply the screening"* (this is **formalising policies of return among EU MS that, despite any apparent formality, in reality constitute push-backs**).

Pending reaction from the Council, it seems that EP added provisions for smaller duration of screening (3 days) and on the need to conduct the health & vulnerability checks.

## Crisis Regulation

The Parliament accepted almost all from the Council position.

### Definitions

The Parliament accepted the three different "crisis" scenarios:

- **Force majeure** defined as "abnormal and unforeseeable circumstances outside the Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent the Member State from complying with obligations under Regulations (EU) XXX/XXX [Asylum and Migration Management Regulation] and (EU) XXX/XXX and [Asylum Procedure Regulation]."
- **Mass arrivals**: "an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including persons disembarked following search and rescue operations, being of such a scale and nature, taking into account, inter alia, the population, GDP and geographical specificities, including the size of the territory of the Member State concerned that it renders the well-prepared Member State's asylum, reception, including child protection services, or return system non-functional - including as a result of a situation at local or regional level - such that there may be serious consequences for the functioning the Common European Asylum System"
- **A situation of instrumentalisation as it was defined in the Council mandate including non-state actor**: "a situation of instrumentalisation where a third country or hostile non-state actor encourages or facilitates the movement of third country nationals and stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security." This would cover all persons apprehended or found in proximity of land border 'including river and lake borders, sea borders, river ports, sea ports and lake ports or disembarked following SAR operation". In addition, there will be the recital from the Council stating that humanitarian aid operations should not be considered as instrumentalisation of migrants" when there is no aim to destabilise the Union or a MS", which means that you would have to demonstrate that there is no aim…

### Governance

- **Parliament accepted that Member States are now at core of governance:** first reasoned request of concerned Member State, then COM implementing decision determining if crisis situation and then Council implementing decision.
- **There will be a "solidarity" coordinator**: as in RAMM, Council accepted inclusion of coordinator but asked to call it "solidarity coordinator" to acknowledge broader forms of

solidarity than relocation;

**Solidarity**

- Although the text now mentions the need to have enhanced solidarity compared to RAMM, there is **no real difference in practice compared to RAMM as to the forms of solidarity measures**: there is **no mandatory relocation** in times of crisis. There is full discretion of MS in need as well as of contributing MS as to the form of solidarity contribution (the different forms of solidarity are the same as in RAMM: relocation, financial contribution, alternative solidarity measures (in-kind)). There would be responsibility offsets when needs can not be covered as set in solidarity pool (as in AMMR). If there are not enough relocation pledges and responsibility offsets, solidarity forum will be convened
- **In relocation, there will be no prioritisation of unaccompanied minors**: Council could only accept primary consideration.

**Agreement on "expedited procedures" to address the EP demand for "prima facie"**

- As part of the Commission Implementing Decision establishing a situation of crisis or force majeure, the Commission "may also adopt a Recommendation on the application of an expedited procedure"
- There will be a new article 15 on "expedited procedures" to address the EP demands for "prima facie":

"1. Where objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence could be well-founded the Commission may, after consultation with the High Level EU Solidarity Forum, adopt a recommendation for the application of an expedited procedure by providing all relevant information in view of facilitating, in particular, the application by the determining authorities of Articles 12(5)(a) and 33(5)(a) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation].

2. Where on the basis of a Recommendation referred to in paragraph 1 the determining authority applies Articles 12(5)(a) and 33(5)(a) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], it shall ensure, by way of derogation from Article 34(2) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], that the examination of the merits of the application is concluded no later than four]weeks from the lodging of the application.

3. When considering whether to adopt a Recommendation referred to in paragraph one, the Commission may consult the relevant Union agencies, UNHCR and other relevant organisations.

Recitals on the following:

- Applicants for international protection, whose applications are examined in the context of the expedited procedure provided for in this Regulation should enjoy all of the rights and guarantees, to which applicants are entitled in accordance with Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], including the right to information and to an effective remedy.

-Applicants for international protection, whose applications are examined in the context of the expedited procedure provided for in this Regulation, should, in accordance with Article 29 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], receive a document certifying their

status in a language they can understand or can reasonably be expected to understand.

-Where objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence could be well-founded, it is in the interest of both the determining authority and the applicants concerned to have the examination of the merits of the application concluded as soon as possible, and therefore no later than [four] weeks from the lodging of the application."

**Derogations**

**Duration of border procedure:** extension to 6 weeks of asylum border procedure and return border procedure (compared to 4 in the EP mandate)

**Extension of Dublin time limits**

**Registration:** extension of 4 weeks after applications are made.

**Scope of the Border procedure**

- In situation of instrumentalisation: all applicants will be put in the border procedure (100%)
- In situation of mass influx, MS may extend of the recognition rate threshold to 50% recognition rate or could go to 5% or lower
- In situation of force majeure, MS are not required to put applicants with nationality with a recognition rate of 20% or lower (derogation from APR)

**No exclusion from the border procedure for families with children under 12 or vulnerable persons:** the supposed "exemptions" given by the Council are not real exclusion clauses as this is already foreseen in APR that vulnerable people may be exempted and proposing cessation in case of well-founded claims is not an exclusion as the claim will have to be assessed. The Commissioner argued that Afghan women will not be able to be put in the border procedure, but this is not true as they would need to be recognised as vulnerable or be a minor or a family member of a minor under the age of 12.

Compromise text says:

"6. In a situation of crisis referred to in Article 1(4)(b), Member States shall provide for an exclusion from the border procedure for specific categories of applicants pursuant to paragraph 9 or

for the cessation of the border procedure for specific categories of applicants following an individual assessment pursuant to paragraph 10. The application of this paragraph shall be without prejudice to the mandatory nature of the border procedure as referred to in [Article 41b] of Regulation (EU) XXX/XXX [Asylum Procedures Regulation].

7. Member States may exclude from the border procedure minors under the age of 12 and their family members, and persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedures Regulation].

8. Member States may cease to apply the border procedure in respect of the following categories of applicants where it is determined, on the basis of an individual assessment, that their applications are likely to be well-founded:

(a) minors under the age of 12 and their family members; and

(b) vulnerable persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedure Regulation]."

**Eurodac Regulation**

**Outcome of open points during last meetings :**

**1_ Beneficiaries of TPD** (above 6 years old) are to be included in Eurodac 3 years after the entry into force of Eurodac, which includes the taking & storing of their biometrics. They will be as any other categories, hence Law enforcement Authorities and Europol will have access to their data. As a compromise for EP majority to accept the inclusion, there is a "safeguard" new Article 47(a) by which Commission shall make an assessment of the functioning & the impact of the inclusion and then make a legislative proposal to amend or repeal this provision. It's to be noted, that if a proposal does not come from the Commission then the inclusion will continue to exist. Hence, no real compromise from the Council on this issue.

2_**Inclusion of CN position on amending Entry Exit System (EES)** As Council obtained its main objectives on TPD and Security Flags, agreed to withdraw its proposal to amend EES to link it with Eurodac allowing cross-checking.

3_**data retention period for different categories of persons registered** Data retention period agreed have two aspects: those agreed during the 2019 mandate (making it that the practice would be overall 10 years of storing of data) and those agreed now for resettled persons (3 and TPD beneficiaries.

4_**security flags** In addition to having moved towards CN position, the majority of EP agreed to

last moment requests of Council, hence the possibility for MS to insert a security flag is extended to cover also under APR provisions under the justification that a MS -different from the one of first entry- should be able to insert a flag if there is not one and “the person has become a threat” (initial agreement was foreseeing only during screening and security checks in AMMR for the purposes of APR). Security flags can be inserted for all categories of persons and, as per Council proposal, MS will have the possibility to limit the right of persons to know that they are the subject of a security flag (hence, in substance, they will not have effective rights of remedy, rectification, appeal etc.).