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NOTE

From: Presidency

To: Strategic Committee on Immigration, Frontiers and Asylum

Subject: Border procedure: Preventing unauthorised entry into the EU territory and unauthorised movements during the border procedure
- Discussion paper

One of the key objectives of the Pact on Migration and Asylum is to manage irregular migration flows and applications for international protection more effectively at the EU's external borders. Screening and the mandatory border procedure for asylum applicants¹ are among the main changes introduced by the Pact² to that effect, combined with the expedited return of those who are then identified as not in need of international protection.

¹ Applicants who are from low recognition third countries, mislead the authorities or present a security risk.

² Through the Asylum Procedure Regulation and the Return Border Procedure Regulation.

Preparing for the application of the border procedure

Preparations for the implementation of the border procedure are ongoing in the Member States, with the support of the Commission and the agencies including through guidance and dedicated discussions in expert groups. Preparation is needed both legally and operationally to ensure the success of the border procedure, notably by establishing communication channels and clear workflows between the relevant authorities. This includes for example:

- Making the necessary adjustments to national law, including transposing detention grounds as necessary and providing for a range of viable alternatives to detention;
- Providing the judiciary with the necessary resources and tools to fulfil their role notably in reviewing the legality of the measures ordered, particularly in order to respect the strict timelines for judicial review;
- Ensuring that third country nationals will be adequately informed about their rights and obligations as well as the consequences in case the obligations are not respected;
- Establishing the adequate technical capacity and infrastructure required to carry out the border procedure;
- Ensuring sufficient well-trained staff are available, and that reception with restrictions of freedom of movement and detention capacity are appropriate, with particular attention to vulnerable groups;
- Defining clear workflows to support a smooth transition from the screening to the asylum to the return border procedure and the efficient cooperation between competent authorities and actors.

In addition to the above, to make the border procedure work, one crucial element must be in place: Member States must be able to ensure the **availability of third-country nationals at each phase: the screening, the asylum border procedure and the return border procedure**. Failure to do so, and hence the unauthorised entry and/or absconding of third-country nationals, would undermine the success of the entire system.

To ensure that the third country nationals remain available during the border procedure and prevent unauthorised entry and movements, the Pact provides a comprehensive toolbox which comprises **(1) restrictions of freedom of movement, (2) alternatives to detention, and (3) detention**³.

While complying with fundamental rights and settled caselaw and respecting the principles of necessity and proportionality, these measures should remain effective and adapted to the national and local contexts.

While some of these measures already exist in EU and national legislation, the Pact ensures implementation in a new and specific setting and tight deadlines linked to the restrictions to ensure availability.

Key elements to consider

Ensuring **continuity between the asylum and return components** of the border procedure will be important. Member States should review their procedures for ordering the various forms of restrictions of movements, alternatives to detention and detention to make sure they have the necessary capacities to (where necessary) prolong relevant measures or change the legal basis for the measure as the person moves from the asylum to the return border procedure.

Moreover, the situation of vulnerable groups, particularly families with children, should be addressed - i.e. Member States should adopt a different approach for restricting movement of those requiring special procedural guarantees or reception needs.

Some Member States have already initiated **pilots to test border procedures** based on the current legal framework before the entry into application of the Pact. Such pilots have the potential to identify possible issues regarding implementation and effectiveness and provide important lessons learned that can be used to inform and refine the ongoing preparation.

Given the **crucial importance of ensuring the availability** of persons in the border procedure, it will be essential to keep under close review the effectiveness of the chosen measures including in relation to specific national or local context. In light of experience, it should be possible to quickly adapt measures and practices accordingly.

³ A detailed overview of the measures is provided in the Annex.

In view of the above, based on your experience so far and taking into account the entry into application of the Pact on Migration and Asylum on 12 June 2026, the Member States are invited to consider the following questions:

- *For the purpose of ensuring that the person stays at the border or designated facilities throughout the asylum and return components of the border procedure:*
 - *How are you planning to organise the procedures (e.g. development of SOPs including procedural linkage)?*
 - *Do you plan to implement these components within single purpose or multipurpose centres?*
 - *How do you plan to implement, and if necessary, adapt the measures of restriction of freedom of movement, alternatives to detention, and detention also for those requiring special procedural guarantees or reception needs?*

 - *What are the lessons learned or the anticipated challenges regarding the implementation of the measures of restriction of freedom of movement, alternatives to detention, and detention?*
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Necessary and available measures to prevent unauthorised entry

Member States must require the applicants subject to the border procedure **to reside at or in proximity to the external border, or in designated facilities within the Member State's territory.**

- *Asylum border procedure*
 - Restrictions of freedom of movement are to be systematically applied to all applicants subject to the asylum border procedure.
 - Restrictions of freedom of movement consist of the obligation to reside in a specific place and where applicable to report to the competent authorities.
 - Restrictions of freedom of movement differ from detention in that these cannot entail a full deprivation of liberty.
 - Decisions entailing restrictions of freedom of movement do not require an individual assessment but do need to take into account the individual situation of the applicant⁴.
 - The Union asylum legislation has envisaged negative consequences for the applicants who do not comply with the restrictions applied to them:
 - no material reception conditions will be available in another place,
 - the right to material reception conditions could be reduced,
 - the application will mandatorily be declared as implicitly withdrawn (in case the applicant has repeatedly failed to comply with imposed reporting duties or does not remain available to the competent authorities without a valid reason), and
 - the applicant may be detained.

⁴ E.g. special reception needs.

- *Return Border Procedure*

- The requirement for persons to reside at or in proximity to the external border, or in designated facilities within the Member State's territory **remains applicable** as the person transfers to the return border procedure.
- A specific tool comparable to the ‘restrictions of freedom of movement’ for applicants in the asylum border procedure does not exist for the return border procedure.
- However, restrictions such as the obligation to reside at a designated place and regular reporting to the authorities can be applied as alternatives to detention to achieve the same effect.

Alternatives to detention:

- Alternatives to detention are non-custodial measures that entail a level of coerciveness of a lower degree than detention. Such alternatives include a wide range of measures, such as the regular reporting to the authorities, the deposit of a financial guarantee, the obligation to reside at a designated place, the obligation to surrender travel or identity documents, the obligation to communicate an address, the sponsorship by a citizen or long-term resident, the community management programmes or supervision and electronic monitoring.
- The consideration of applying alternatives to detention is part of the assessment of the necessity and proportionality of detention, since detention may be ordered only if less coercive alternative measures cannot be applied effectively.
- This assessment ensures in particular that the detention of applicants is actually a measure of last resort. As these less coercive measures must constitute viable alternatives to detention, they must be available and effective.

Detention:

- Detention is defined as the confinement of an applicant in a particular place, where the applicant is deprived of his/her freedom of movement.
- Detention may be ordered as a last resort measure, only where necessary and proportional, based on an individual assessment of each case, only for one or more of the exhaustive grounds provided for and only if less coercive alternative measures cannot be applied effectively.
- Detention is applied on the basis of individual decisions issued by judicial or administrative authorities and is subject to judicial control.
- The conditions of detention are regulated by EU law. Seven grounds for detention are applicable during the asylum border procedure (including: the applicant has not complied with a measure obliging him/her to reside in a specific place and to decide on the applicant's right to enter the territory). Four grounds of detention are applicable to the return border procedure⁵ including the possibility to detain a person who was already detained during the asylum border procedure which ensures continuity between the two procedures.

⁵ Article 5 of the Return Border Procedure Regulation provides for four grounds for detention: 1) if the person was detained during the asylum border procedure, who no longer have a right to remain and who are not allowed to remain, in order to prevent their entry into the territory of the Member State, 2) if there is a risk of absconding within the meaning of Directive 2008/115/EC, 3) if the person avoids or hampers the preparation of return or the removal process, or 4) if the person poses a risk to public policy, public security or national security.