

Crisis and force majeure Regulation

2020/0277(COD) - 23/09/2020 - Legislative proposal

PURPOSE: to create a new legislative instrument to provide for temporary and extraordinary measures in situations of crisis and *force majeure* in the field of migration and asylum.

PURPOSE: PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the [New Pact on Migration and Asylum](#)'s goal of putting in place a comprehensive and robust migration and asylum policy is the best protection against the risk of crisis situations. In situations of crisis, Member States might need a wider set of measures in order to manage a mass influx of third-country nationals in an orderly fashion and contain unauthorised movements. Such measures should include the application of an asylum crisis management procedure and a return crisis management procedure.

The EU must be ready to address situations of crisis and *force majeure* with resilience and flexibility – in the knowledge that different types of crises require varied responses. As part of this comprehensive framework, it is necessary to put in place a system with tools necessary to deal with crisis situations and situations of *force majeure*.

CONTENT: the Commission proposes to create a new legislative instrument to address situations of crisis and *force majeure* in the field of migration and asylum within the Union.

The objectives of this instrument are twofold:

- (1) to provide flexibility to Member States to react to crisis and *force majeure* situations and grant immediate protection status in crisis situations;
- (2) to ensure that the system of solidarity established in the new Asylum and Migration Management Regulation is well adapted to a crisis characterised by a large number of irregular arrivals.

The overall objective of the proposal is to provide for the necessary adaptation of the rules on asylum and return procedures (Asylum Procedures Regulation and Return Directive) as well as of the solidarity mechanism established in the [new Regulation](#) on Asylum and Migration Management, in order to ensure that Member States are able to address situations of crisis and force majeure in the field of asylum and migration management within the EU.

Definition of crisis situations

The proposed system distinguishes between crisis situations that are caused by irregular arrivals of scale and nature that it would render a Member State's asylum, reception or return system non-functional. It shall also cover situations where there is an imminent risk of such arrivals having serious consequences for the functioning of the Common European Asylum System and the migration management system of the Union as a whole. Situations of *force majeure* in the field of asylum and migration management are also addressed, including situations recently experienced by Member States due to the coronavirus pandemic.

Such situations of *force majeure* may make it impossible for Member States to respect the time limits set by the proposed Asylum Procedures Regulation and the proposed Asylum and Migration Management Regulation for registering applications for international protection or carrying out the procedures for determining the Member State responsible for examining an application for international protection.

Accelerated procedures and extended time frame

Therefore, the present proposal establishes specific rules to ensure a faster procedure than that foreseen in the proposed Regulation on Asylum and Migration Management in order to ensure that an effective and efficient system is permanently in place to deal with a situation of crisis.

This proposal also provides for an extension of the timeframe for the implementation of the obligation to relocate or undertake return sponsorship when a Member State is in a situation of force majeure which renders it impossible to fulfil these obligations as set out in this Regulation and in the Regulation on Asylum and Migration Management.

Immediate protection status

The proposal also includes a faster procedure to grant immediate protection to groups of non-EU nationals who are facing a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict, and who are unable to return to their country of origin.

This precise group of people would be determined by the Commission in an implementing act. Immediate protection status can be granted for a maximum of one year to all persons belonging to this group that claim asylum and are not a security threat or have not committed serious crimes. At the same time, Member States would suspend the processing of the asylum applications of these individuals for up to a year, avoiding risks of backlogs in processing large numbers of asylum applications. After one year, Member States need to resume this processing.

Derogations from EU law

The proposal also includes provisions related to crisis situations which allow for certain derogations from the proposed Asylum Procedures Regulation. In particular, it will be possible to extend the scope of application of the border procedure to third-country nationals and stateless persons whose EU-wide first instance recognition rate is 75% or lower, in addition to the grounds already provided by the Asylum Procedures Regulation, as well as to extend the duration for the examination of an application of international protection under the border procedure by an additional eight weeks.

It is also proposed to allow Member States to derogate from the provisions on registering applications for international protection with a longer deadline of four weeks.

Moreover, the proposal provides for the possibility to derogate from certain provisions on the border procedure to carry out return. For this purpose, the proposal extends the maximum duration of the border procedure for carrying out return by an additional period of eight weeks (the proposed Asylum Procedures Regulation sets the maximum time-limit to twelve weeks).

Relocation

With respect to relocation, the scope of this proposal is also widened as compared to that provided for in the situations of pressure in the Regulation on Asylum and Migration Management, as it will also apply to applicants for international protection in the border procedure, irregular migrants and persons granted immediate protection under this Regulation. Transfer of illegally staying third-country nationals or stateless persons subject to return sponsorship, from the Member State in crisis to the sponsoring Member

State, would intervene if return has not been successfully completed within four months, i.e. following a period shorter than the one set in the Regulation on Asylum and Migration Management (eight months).

Budgetary implications

Due to the nature of this proposal linked to a crisis situation, it is not possible to estimate a priori the possible budgetary impact. It will be accommodated as far as possible within the budget of the existing instruments under the period 2021-2027 in the field of migration and Asylum, and where necessary, using the flexibility mechanisms provided within the MFF 2021-2027.