

Crisis and force majeure Regulation

2020/0277(COD) - 10/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 301 votes to 272, with 46 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

Greater solidarity and support for Member States in the event of migration and asylum crises

The Union and its Member States could be confronted with migratory challenges that can vary greatly, in particular with regard to the scale and the composition of the arrivals. It is therefore essential that the Union be equipped with a variety of tools to respond to all types of situations.

This Regulation addresses **exceptional situations of crisis**, including instrumentalisation, and force majeure, in the field of migration and asylum within the Union by means of temporary measures. It provides for enhanced solidarity and support measures while ensuring the fair sharing of responsibility, and for temporary specific rules derogating from the rules concerning the asylum procedure. It provides measures to ensure that Member States receive full support in situations of crisis and force majeure, including through the solidarity mechanism that ensures a fair sharing of responsibility and a balance of efforts between Member States in situations of crisis.

A situation of crisis means:

- **an exceptional situation of mass arrivals** of third-country nationals or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature, taking into account, *inter alia*, the population, GDP and geographical specificities of the Member State, including the size of the territory, that it renders the Member State's well-prepared 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 could be serious consequences for the functioning of the Common European Asylum System;
- **a situation of instrumentalisation** where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and 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. Humanitarian aid operations should not be considered as a case of instrumentalisation when there is no aim to destabilise the EU or a Member State;
- a situation where the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent that Member State from complying with its obligations.

Governance

Where a Member State considers itself to be in a situation of crisis or force majeure, it may, given those exceptional circumstances, submit a **reasoned request** to the Commission, in order to benefit from solidarity measures allowing for the proper management of that situation and to allow for possible

derogations from the relevant rules on the asylum procedure, while ensuring that the applicants' fundamental rights are respected.

The Commission should assess the situation within **two weeks** and decide whether or not a crisis situation exists. It should also present to the Council a proposal for an implementing decision on solidarity measures and derogations, as well as a recommendation on the application of a rapid procedure for granting international protection to certain categories of applicants.

The Commission should report to the European Parliament and the Council, every three months after the entry into force of the Council implementing decision, on the application of that decision, in particular on the effectiveness of the measures undertaken in resolving the situation of crisis or force majeure and should determine whether the situation persists and whether the measures continue to be necessary and proportionate.

Solidarity measures

The new rules foresee a predictable and permanent system of solidarity in which all Member States must contribute to support the member state in crisis. Among the possible solidarity measures to address a specific crisis, a Member State can propose to the Commission to **opt for the relocation of asylum applicants and targeted financial contributions or alternative measures**.

Certain categories of people - such as applicants coming from a specific country of origin - may be identified as entitled to prima facie protection, i.e. authorities should prioritise the examination of their application because they are likely to be well-founded and to ensure the swift conclusion of their application.

Derogations

In crisis situations, the registration of asylum applications could take up to **4 weeks**. Member State concerned should prioritise the registration of applications of persons with special reception needs and of minors and their family members. Member States should ensure that applicants are able to access and exercise their rights under those instruments in an effective manner as soon as they make an application, regardless of when the registration takes place.

When confronted with a situation of crisis or force majeure, it should be possible for the Member State concerned to extend the examination of applications for international protection at the border by **six weeks**.

In situations of mass influx, the threshold for the border procedure can be adapted either upwards or downwards. In instrumentalisation situations, after an individual assessment, **vulnerable persons and families with children under 12 years** could be excluded from the border procedure.

For the purposes of applying the derogations, the basic principles of asylum law and respect for the principle of **non-refoulement** should be applied to ensure the protection of the rights of persons seeking international protection, including the right to an effective remedy. Organisations and persons authorised by national law to provide advice and counselling should have effective access to applicants in detention centres or at border crossing points.

Expedited procedure

Where objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence or a part of that country or on the basis of the criteria drawn from that Regulation could be well-founded, it is in the interest of both the determining authorities and the applicants concerned to conclude the examination of the merits of the

application as soon as possible and to allow for a swift and efficient granting of international protection in a situation of crisis.