

European Commission meeting with the key NGOs: Exchange of views reflecting the Pact implementation in Denmark on 11 October 2024

Handout on DRC's key recommendations on Denmark's implementation of the EU Pact

Denmark and the EU Pact

Despite legal reservations on EU asylum law, Denmark has joined parts of the Common European Asylum System (CEAS) through a parallel agreement, such as the Dublin III Regulation and the Eurodac Regulation. Due to Danish participation in the Schengen co-operation, Denmark is also bound by the Return Directive.

As a continuation of the current parallel agreements, [the Danish Parliament in June 2024 decided to join](#):

- The Eurodac Regulation
- Parts of the Asylum and Migration Management Regulation (AMMR) that replaces the Dublin III Regulation

Due to the Schengen cooperation, [the Danish Parliament will mid-October 2024 decide](#) whether to join:

- The new Regulation on a Screening procedure
- The new Regulation on a Return procedure at the border

The Danish parliament has decided not to voluntarily join the [solidarity mechanism](#) of the AMMR, which it is not legally bound to.

DRC provides legal aid to asylum seekers in Denmark

Danish Refugee Council (DRC) has for decades provided legal aid and counselling to asylum seekers and refugees in Denmark. Since 2014, DRC has also provided legal representation for asylum seekers in the Dublin procedure.

Based on knowledge from the legal aid work, DRC has engaged in the reform of the Common European Asylum System and issued [recommendations on the AMMR](#). DRC finds that the EU Pact will overall limit rights of asylum seekers, but we want to engage in the implementation of the EU Pact to promote the respect for fundamental rights.

DRC's key recommendations on Denmark's implementation of the Asylum and Migration Management Regulation (AMMR)

Families still risk separation in the new responsibility procedure

Currently, the Danish authorities have a restrictive interpretation of the definition of family and limited use of the dependency clause and the discretionary clauses.

The AMMR allows for circumstantial evidence to be sufficient to establish family links (Recital 54), which can be a positive change if implemented properly in practice. The definition of family member (Article 2(8)) has also been expanded, but in DRC's view the expansion should have included all relevant family members to ensure that an asylum can have the asylum claim examined in a Member State to which the person has meaningful links.

Proper guidance on the use of the discretionary clauses (Article 35) will be key, as there is a risk that the current practice will continue and that families still will be at risk of separation during the new responsibility procedure.

Recommendation: The European Commission must ensure that the Danish Dublin Unit is informed about the lowered evidentiary standards in relation to the family provisions and encouraged to use the discretionary clauses to ensure that family is kept together.

The reasons for onward movement must be addressed and punitive measures avoided

Based on DRC's experiences, many asylum seekers feel forced to move within the EU due to ill-treatment by the authorities such as pushbacks or lack of access to adequate reception conditions and fair asylum procedures. Many people also move because they want to reunite with family in other Member States.

Instead of addressing the reasons people move, the increased obligations on the individual (Article 17) and the derived possibility for Member States to punish people for onward movements (Article 18) might increase the number of people living in destitution.

Recommendation: The European Commission must ensure that Member States provide access to efficient asylum procedures and adequate reception conditions for all asylum seekers to ensure that people do not feel forced to move due to ill-treatment or undignified living conditions. The European Commission must also monitor whether sanctions under the AMMR will lead to an increased number of people living in destitution.

Efficient access to free individual legal counselling

Currently, DRC provides free legal counselling and representation to asylum seekers in the Dublin procedure. DRC is informed about the case, when the asylum seeker appeals the first instance decision by the Danish Immigration Service.

The AMMR introduces a right to legal counselling during the procedure (Article 21). Considering the short timelines and the limited scope of the appeal, it will be necessary for asylum seekers to get efficient access to free individual legal counselling from the outset of the procedure and before a responsibility decision is made. It is important that the legal counselling is individual to ensure that the asylum seeker gets the possibility to understand and better navigate the procedure.

Recommendation: All asylum seekers should have efficient access to free individual legal counselling from the beginning of the procedure and before a transfer decision is made. The Danish Immigration Service should refer all asylum seekers who might get a responsibility decision to legal counselling, e.g. with DRC.

Special considerations for children in the responsibility procedure

Currently, all unaccompanied minors are appointed a guardian when they apply for asylum in Denmark. The appointment of guardians is coordinated by the Danish Red Cross. Upon a decision in the Dublin procedure, unaccompanied minors also get a legal representative by DRC.

The AMMR requires that best interests of the child assessments are determining for deciding the responsible Member State (Article 23 and Article 25). With the limited scope of the appeal procedures, all children, who arrive alone in Denmark, will thus both depend on a guardian and a legal representative to ensure that their best interests are considered adequately during the responsibility procedure.

The AMMR allows for the Member State to decide that a person should not be treated as a minor, if the person looks like an adult (Article 23(2)). This practice could lead to children not getting access to guardians during the procedure.

Recommendation: To ensure that the best interests of the child are adequately considered and represented during the responsibility procedure, the Danish authorities must ensure that all unaccompanied minors – in addition to a guardian - get a legal representative from the beginning of the procedure and before any decision on responsibility is made. It should always be possible to complain about the age assessment or the lack of an age assessment.

Right to remain is a precondition for the right to an effective remedy

Currently, all asylum seekers in the Dublin procedure in Denmark have the right to remain during the appeal with the transfer decision automatically being suspended upon appeal.

In the AMMR, Member States can decide on suspensive effect during the appeal (Article 43(3)), but the Danish practice works well and should thus be preserved.

Recommendation: All asylum seekers in the responsibility procedure should automatically be granted the right to remain during the appeal. It is especially important for children.

Denmark should be encouraged to support the solidarity mechanism

The newly introduced solidarity mechanism in the AMMR (Part IV) is articulated as a precondition to make the asylum reform work. Denmark is not bound by the obligatory solidarity mechanism due to the opt-out of the JHA area, and the Danish Parliament has decided [not to voluntarily join the solidarity mechanism in the AMMR](#).

Recommendation: The European Commission should monitor whether Denmark's opt-out of the solidarity mechanism has consequences for the functioning of the AMMR and consider whether Denmark should be encouraged to provide necessary solidarity measures such as responsibility offsets to Member States in need of solidarity.

DRC's key recommendation on Denmark's implementation of the Screening Regulation

Adequate reception conditions and not detention

Currently, newly arrived asylum seekers are accommodated in the reception center, Sandholm, which is located about 30 km north of Copenhagen. Asylum seekers in the Dublin procedure are usually accommodated in a return center, Sjælsmark, located near Sandholm.

In the Screening Regulation, asylum seekers must remain accessible for the authorities (Article 6 and 9(1)) and they can be accommodated in adequate centers (Article 8).

Recommendation: All asylum seekers in the screening procedure should be treated like other newly arrived asylum seekers and thus accommodated in the same reception centers, i.e. Center Sandholm. Considering the capacities of the Danish reception system this would be the most humane, effective, and least resource-intensive modality. Detention should only be used as a last resort, and the individual situation of the person such as vulnerabilities must be carefully considered. The European Commission should monitor the use of detention for asylum seekers.

Screening should be done by civil authorities specialized in asylum law

Currently, the Danish Immigration Service is responsible for the asylum procedure.

The Screening Regulation allows for information on the travel route and asylum motive to be written in the screening form (Article 17(2)), which can be used in the asylum case.

To ensure that the information is collected by a civil authority that is adequately trained in asylum law and work with asylum seekers, the Danish Immigration Service should be responsible for the screening procedure (Article 8(9)).

Recommendation: The Danish Immigration Service should be responsible for conducting the screening procedure.

Efficient access to free individual legal counselling

Currently, DRC provides legal counselling to asylum seekers throughout the procedure.

Asylum seekers in the screening procedure have the right to legal counselling (Article 11(1)(c)) and counsellors should have efficient access to the asylum seekers (Article 8(6)).

To ensure the right to legal counselling and information about the procedure, asylum seekers in the screening procedure should get access to legal counselling from DRC.

Recommendation: All asylum seekers should have efficient access to individual legal counselling from the beginning of the procedure. The Danish Immigration Service should refer all asylum seekers in the screening procedure to legal counselling, e.g. with DRC.