

**Position Paper****Caritas Europa's analysis and recommendations on the  
EU Pact on Migration and Asylum****Introduction**

On September 23, the European Commission (EC) presented a new *Pact on Migration and Asylum*<sup>1</sup>, consisting of key legislative and non-legislative proposals. The legislative proposals will now be negotiated by the European Parliament (EP) and the EU Member States (MS). The current common European asylum system (CEAS), that is both unfair and dysfunctional, acutely needs to be improved. Indeed, discrepancies across MS in the application of the asylum *acquis* lead to different prospects of receiving protection and reception standards from one MS to another. In addition, an overhaul of the Dublin system, which puts disproportionate responsibility on EU frontline border MS to process asylum applications, is greatly needed. The Pact tries to overcome past failure to reform the asylum *acquis* by proposing a compromise taking acute differences among MS positions on solidarity sharing into consideration.

Caritas Europa has been involved in the consultations carried out by the EC in the run up to the launch of the Pact, and has followed very closely the latest developments. Indeed, these reform proposals will have a key impact on the field work of our members, who have been engaged for years on different aspects of the migratory journey: from emergency relief and asylum reception to long-term migration integration, to voluntary return and reintegration counselling. Experience from our members in recent years have shown a clear need for more responsibility and solidarity sharing in the system, as well as more humane policies that put human dignity and human rights at the centre, both in law and practice.

This analysis of several aspects of the Pact is based on the potential consequences the proposals could have on the lives of migrants and refugees, and builds upon our first reaction to the Pact<sup>2</sup> and our joint CSO statement<sup>3</sup>. Caritas Europa also analysed the Pact through the lens of the Catholic Social Teaching, including the recently published encyclical letter *Fratelli Tutti*, which deplores an absence of human dignity on the borders and calls for a more fraternal, balanced and humane approach to migrants, anchored in the four words: welcome, protect, promote and integrate<sup>4</sup>.

Overall, we acknowledge the efforts made to promote a more positive narrative on migration and to strengthen the rights of the child and family unity, as well as attempts to pay more attention to the protection of fundamental rights at the borders. Nevertheless, we regret the continuity with past approaches that prioritise return and migration prevention through enhanced cooperation with countries of origin and transit over provisions to facilitate human mobility. We are concerned that proposals to expand fast track border procedures could come to the detriment of migrants' and refugees' rights in practice, as our members have witnessed in the hotspot approach implemented in Italy and on the Greek islands. We also fear that the complexity of the

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<sup>1</sup> [https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020\\_en](https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en)

<sup>2</sup> <https://www.caritas.eu/on-the-new-eu-pact-on-migration-and-asylum/>

<sup>3</sup> <https://www.caritas.eu/eu-pact-risky-elements-and-positive-aspects/>

<sup>4</sup> §22, 129-132, [http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20201003\\_enciclica-fratelli-tutti.html](http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html)

proposed solidarity mechanism and the “return sponsorship” concept will not lead to predictable solidarity and responsibility sharing among MS on the ground, and will come at the expense of people’s rights and human dignity.

The recommendations that we outline in this position paper to the members of the EP and the Council aim to make the Pact more functional and fairer to migrants and MS alike, in order to avoid the creation of more Moria’s camps<sup>5</sup> and suffering at the EU borders.

## **1. Screening procedures at the border**

The EC has proposed a new **regulation<sup>6</sup> introducing a screening of all third country nationals arriving irregularly at the external borders**, including people who have been disembarked. The screening aims to strengthen the controls on entry into Schengen and to refer people to appropriate procedures (i.e. return procedure or asylum procedure). When carried out at the border, the screening is to be done within **five days** (three days when done within the territory of a MS, for instance, at the airport). In case of exceptional circumstances, a five day extension is possible. The proposal, however, **does not specify where people will stay** during the screening<sup>7</sup> and at this stage, **access to EU territory will not be authorised**.

According to the proposal, the **screening shall comprise the following elements**: checks on health and vulnerability, identification, and security risks, and biometric data is to be stored in the relevant database. This information will feed into a de-briefing form<sup>8</sup> that will include sensitive data including initial **indications of nationality**. Based on this, people will then be channelled into particular procedures. This is critical as the screening and use of biometric data will **influence the modalities and speed of an individual’s asylum procedure**. A main concern is that the **screening outcome can channel asylum applicants into an accelerated border procedure** based on what could be deemed a **discretionary procedure (indication of nationality)<sup>9</sup>** in the debriefing form, art. 14.2.: “the screening shall point [...] to any **elements which seem at first sight to be relevant** to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure”), without access to legal remedies. Another concern is the fact that no oral and independent provision of information and counselling is foreseen, as “information shall be given in writing and, in exceptional circumstances, where necessary, orally using interpretation services” (art. 8.3).

In addition, the **health check** is meant to identify any needs for immediate care, unless “the relevant competent authorities are satisfied that no preliminary medical screening is necessary”. The proposal also states that where relevant, it shall be checked whether persons are in a **vulnerable situation, victims of torture or have special reception or procedural needs**, in which case adequate support should be provided, including for minors (art. 9). Worryingly, this wording indicates that **vulnerability and health checks may not systematically be carried out, based on rather discretionary criteria**.

A welcome element is that MS will have to set up **an independent monitoring of fundamental rights in relation to the screening** with the guidance of the Fundamental Right Agency (art. 7). The monitoring will, among others, look at compliance with national rules on detention (grounds and duration)<sup>10</sup>, the respect of *non-*

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<sup>5</sup> <https://www.caritas.eu/moria-fires-caritas-calls-for-the-safety-of-migrants/>

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601291190831&uri=COM:2020:612:FIN>

<sup>7</sup> Art. 6.1. “Locations situated at or in proximity to the external borders”.

<sup>8</sup> See art. 13 and template in the annexes.

<sup>9</sup> The regulation uses the term *Identification* of nationality as asserting with certainty people’s nationality at the border is a well-known problem that staff are facing on the ground.

<sup>10</sup> The fact that the monitoring mechanism should monitor the detention conditions, alludes to the risk that detention could be widely used during the screening phase.

*refoulement*, and access to the asylum procedure. Relevant national, international and non-governmental organisations (NGO) and bodies may be invited to participate in the monitoring. MS should integrate the results of their national monitoring mechanism in their national strategies mentioned in the proposed regulation on asylum and migration management (see infra). Widespread and well-documented allegations of pushbacks and violence at the borders of certain MS, in some cases with the complicity of state authorities, emphasises the dire need of having a **truly independent monitoring mechanism that identifies such abuses and leads to greater accountability and sanctions**.

**Caritas Europa's recommendations:**

- We recommend amendments to ensure that the outcome of the **de-briefing form be carried out in a non-discretionary manner** and that applicants have access to **legal aid and remedies** in case they wish to challenge the outcome of the debriefing form.
- We strongly recommend that **independent oral counselling** is provided to migrants and asylum seekers at the earliest stage, since the first contact with European authorities will take place during the screening procedure and will have an impact on the asylum procedure following.
- We call for the **authorities involved in the screening procedure to be appropriately trained** and qualified to receive relevant information from asylum seekers, as the information received during the screening procedure is relevant for the asylum procedure.
- We recommend strengthening art. 9 to ensure that all **vulnerabilities and health conditions**, including invisible ones, can be systematically examined and diagnosed, taking into account cultural and medical biases, and that appropriate care by a competent healthcare or psychological staff be administered.
- We call for amendments to **prevent the systematic use of detention** during the screening period and to ensure that UNHCR detention guidelines are applied<sup>11</sup>.
- We call for the revision of art. 7 in order to expand the mandate of the **monitoring mechanism** beyond the screening phase and to enhance the involvement of EU agencies and external actors in ensuring genuine independence, effective accountability, and a sanction mechanism<sup>12</sup>.

## **2. Border asylum and return procedures**

The EC presented an amended proposal for a **Regulation establishing a common procedure for international protection** (APR)<sup>13</sup>, which builds on past negotiations with the EP and the Council. The proposal introduces **provisions on asylum and return procedures to be carried out at the border**, in order to speed up procedures, increase the link between asylum and return, as well as the return rate, and to reduce secondary movements to EU countries by keeping applicants at the border. As described above, based on the **outcome of the de-briefing form** carried out during the screening procedure, a person will be **channelled into the relevant procedure**: either the return procedure if an application for protection is not made, the “normal” asylum procedure, or the border asylum procedure, depending on the likelihood of receiving protection.

When a **border procedure** is applied, decisions are taken **on either the inadmissibility** of an application (e.g. concepts of first country of asylum, safe third country), or **on the merits** of an application in an accelerated examination procedure (e.g. safe country of origin, unfounded claim). MS will **have to apply border procedures on the merit of an application, when the person comes from a country whose average**

<sup>11</sup> <https://www.refworld.org/pdfid/503489533b8.pdf>

<sup>12</sup> See also these NGO recommendations: <https://www.ecre.org/turning-rhetoric-into-reality-new-monitoring-mechanism-at-european-borders-should-ensure-fundamental-rights-and-accountability/>

<sup>13</sup> <https://eur-lex.europa.eu/legal-content/EN/TEXT/?qid=1601291268538&uri=COM:2020:611:FIN>

**protection rate is below 20%**, according to Eurostat<sup>14</sup>, when claims are deemed clearly abusive (e.g. the applicant has misled the authorities), or when the applicant poses a security threat. In other cases, MS are free to apply border procedures but are not obliged to do so (e.g. under the concepts of safe third country of asylum and safe country of origin<sup>15</sup>). A MS can also decide not to apply a border procedure when the country of origin of the person does not cooperate on readmission. **Remedies** to be laid down in national law are foreseen (one-level appeal), but with **shortened timeframes** (e.g. between one week and two months depending on the case) and with **some limitation** (e.g. restriction to the suspensive effect of an appeal depending on the case).

The **asylum border procedure** is set to last **twelve weeks maximum** (starting with the registration of the application), including potential appeals. During this period, applicants are **not authorised to enter the territory** of the MS (“non-entry fiction”), so a **key concern is detention**. While the proposal does not explicitly call for detention, it specifies that “**persons shall be kept at** or in proximity to the external border or transit zone” (art. 41a.2) and stresses that MS may resort to detention to prevent entry into the territory (recital 40f) in conformity with other legislation (i.e. reception conditions). In order to **increase the link between asylum and return and to avoid absconding**, a return decision will be issued at the same time an asylum application is rejected (art. 35a). The **return procedure** following this will also last for a maximum of **twelve weeks**, including **15 days for voluntary return**. The proposal (art. 41a, 6-7) specifies that **detention** may be carried out to **prevent absconding and organise the return**, conform with the recast directive<sup>16</sup>. The detention period would be in addition to the preceding period accumulated during the asylum border procedure. An **additional eight week timeframe** for each the asylum procedure and the return procedure could be possible in situations of **crisis or force majeure** (see infra).

Some **exception and safeguards** are provided for: **Unaccompanied minors and family with children under the age of twelve are exempt** from border procedures as far as they are not considered to be a danger to national security or public order (art 41.5, 40.5(b)). In addition, MS must **cease to apply border procedures in some cases** (41.9) (e.g. necessary support cannot be provided to applicants with special procedural needs, medical reasons, and when the guarantees and conditions for detention are no longer met). An exception to the obligation to carry out an accelerated border procedure for applicants coming from a country where the protection rate is below 20% is foreseen “where the applicant belongs to a specific category of persons for whom the low recognition rate cannot be considered as representative of their protection needs due to a specific persecution ground”.

**Several elements of this proposal risk replicating the “hotspot” approach** that has been implemented along the Italian and Greek border, and the deficiencies of which Caritas organisations have witnessed on the ground. These include among others: overburdened staff and authorities due to a lack of capacities and (wo)manpower, inappropriate and overcrowded facilities, including for vulnerable groups, widespread detention, non-detection of vulnerabilities and lack of medical care, minors’ rights being disregarded, etc. In addition, fast-track procedures can lead to errors and protection claims being overlooked due to time pressures, and in practice, applicants typically lacking adequate access to legal aid or the ability to properly exercise their right to appeal<sup>17</sup>. Caritas Europa is therefore concerned that this proposal could potentially **increase the**

<sup>14</sup> It is worth noting that given the wide discrepancy of protection rates granted among MS, that for a given country, this means the acceptance rate can be very low in one MS and high in another one.

<sup>15</sup> See art 41 of the proposal, to be read in accordance with the 2006 APR proposal under negotiation, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF>

<sup>16</sup> The return recast directives foresees a maximum detention period of six months, which can be prolonged under certain circumstances by an additional period of up to twelve months.

<sup>17</sup> For an in-depth analysis on the implementation of border procedures in Europe and its negative impact, see the European Implementation Assessment of Asylum procedures at the border by the European Parliamentary Research Service: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654201/EPRS\\_STU\(2020\)654201\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654201/EPRS_STU(2020)654201_EN.pdf), and EASO report on border procedures: <https://www.easo.europa.eu/sites/default/files/publications/Border-procedures-asylum-applications-2020.pdf>

**burden on frontline border MS, undermine access to fair and efficient asylum procedures, and lead to widespread detention and inhumane reception conditions** for migrants being kept along the border.

**Caritas Europa's recommendations:**

- We call to **make the use of border procedures not compulsory and to limit the use of the controversial concepts of safe third country and safe country of origin**. The proposal should also refrain from lowering the protection and procedural standards in the border procedure as foreseen in the 2016 Asylum procedure proposal<sup>18</sup>, and should increase safeguards. The “20% recognition rate criteria”, which discriminates based on the nationality, should be deleted.
- In order to speed up procedures, **accelerated and simplified case processing** could be applied for **manifestly well-founded asylum claims**, as per UNHCR suggestion<sup>19</sup>.
- The **safeguards** in the proposal should be **expanded**; art. 41.5 should be amended to ensure that **families with children under the age of 18** (instead of 12) are excluded from border procedure, in order to comply with the international definition of a child<sup>20</sup>.
- The proposal should be amended to **prevent MS from using detention as a default option** and encourage them to use alternatives to detention and apply UNHCR detention guidelines<sup>21</sup>.
- We suggest the **relocation to take place immediately after the screening procedure**. If this is not agreeable among the legislative bodies, we recommend that if an asylum claim has not been processed during the timeframe foreseen in the border procedure, the applicant should be relocated to another MS.

### **3. Responsibility and solidarity sharing**

The most expected legislation proposal relates to the rules on responsibility and solidarity sharing among MS. The EC proposal for a **Regulation on asylum and migration management**<sup>22</sup> is made of three main parts: 1) provisions establishing a common framework for asylum and migration management; 2) criteria and mechanisms for determining the MS responsible; and 3) solidarity mechanism. Here, we focus on some elements of the two last parts.

#### **Criteria and mechanisms for determining the MS responsible**

In the proposal, the dysfunctional Dublin regulation, which puts disproportionate responsibility for processing asylum applications on the frontline EU border states of first arrival, officially disappears. But the system behind it remains, albeit with simplified administrative procedures<sup>23</sup>. **The allocation of state responsibility to process an asylum claim will remain based on a hierarchy of criteria, including the controversial “first entry criterion”**. This is concerning, as it will not drastically resolve the problems associated with the Dublin system<sup>24</sup>.

<sup>18</sup> Article 45 (concept of safe third country) and 47 (concept of safe country of origin), <https://www.caritas.eu/wordpress/wp-content/uploads/2016/06/160601-PP-Safe-countries-of-origin.pdf>

<sup>19</sup> <https://www.refworld.org/docid/5b589eef4.html>

<sup>20</sup> Art. 1 of the UN Convention on the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>21</sup> <https://www.refworld.org/pdftid/503489533b8.pdf>

<sup>22</sup> <https://eur-lex.europa.eu/legal-content/EN/TEXT/?qid=1601291110635&uri=COM:2020:610:FIN>

<sup>23</sup> Provisions related to dependent persons and discretionary clauses (art 24 – 25) remain mostly as before.

<sup>24</sup> The responsibility will cease if the application is registered more than 3 years after the date on which the border crossing took place instead of 12 months currently, increasing therefore the responsibility put on the first country of arrival.

Nevertheless, the EC has tried to increase the link between the asylum applicant and the state responsible for the application by proposing some welcomed changes. For instance, the **criteria and procedures related to family unity are improved and simplified** (e.g. definition of family is enlarged to include siblings and family formed during the journey), and the **best interest of the child is reinforced**. However, **legal remedies** are not available against a rejection of take charge request, which can have an important impact on family unity in practice. Similarly, the time limits for applying for family unification are reduced. The **possession of a diploma or qualification** from an EU MS is a newly introduced and welcomed criterion to determine responsibility (art. 20).

For a functioning European asylum system, and to reduce secondary movement, it is very important to **enable mobility for beneficiaries of international protection between MS**<sup>25</sup>. A positive incentive for asylum seekers to remain in the MS responsible for their asylum application would be the introduction of mobility within the EU for beneficiaries of international protection when they have a job offer available. While we welcome the proposal to **amend the long-term residence directive** so that beneficiaries of international protection can obtain a long-term residence permit (facilitating some intra-EU mobility) after three years instead of five, we fear that this will not be a sufficient incentive against secondary movement<sup>26</sup>. We also regret that **a punitive approach to preventing secondary movement remains**, as an applicant who is not present in the responsible MS won't be entitled to the reception conditions when staying in another EU MS (art. 10).

#### Caritas Europa's recommendations:

- The criteria that could facilitate **family unity and increase the link** between the asylum applicant and the country responsible for the asylum application **should be further strengthened and properly implemented by MS**, which is currently not the case (e.g. family related criteria are often overlooked). Family unity criteria must be accompanied with **functioning legal remedies** against a rejection of take charge request to strengthen the practical implementation of family unity.
- In order to alleviate the pressure on EU border MS and ensure more solidarity between MS, the **first entry criteria** to determine a MS responsible to process an asylum application should be amended.
- Instead of adopting a punitive approach to secondary movement, **positive incentives** should be used to ensure that the applicant remains in the MS assigned to him/her. Beneficiaries of international protection should be offered a **limited freedom of movement** within the Schengen Area, if the person can show stable employment in another MS. Art. 10 that removes reception conditions when a person is not in the MS responsible should be deleted. Importantly, new provisions should be introduced to **take into account the asylum applicants' preferences and ties to a particular MS** when determining the MS responsible, in line with the EP report on the 2016 Dublin proposal<sup>27</sup>. A "matching system" could, for instance, be introduced.

#### Solidarity mechanism

Due to unresolved discrepancies among MS on the use of compulsory relocation, the EC tried to accommodate different positions by introducing a highly **complex toolbox solidarity mechanism**, the modalities of which would work differently depending on the country's migratory situation. In cases of **"migratory pressure" or following the disembarkation** of rescued migrants, each MS would be **compelled to contribute to the**

<sup>25</sup> In particular as long as the recognition rates and the work prospects differ fundamentally from one MS to another one.

<sup>26</sup> Art. 71 "Amendments to the Long Term Residence" (Directive 2003/109/EC)

<sup>27</sup> [https://www.europarl.europa.eu/doceo/document/A-8-2017-0345\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2017-0345_EN.pdf)

**solidarity mechanism**<sup>28</sup>, but they will be free to choose which measure to adopt. Available options include: relocation<sup>29</sup>, capacity building measures, and return sponsorship (art. 45).

In what concerns **disembarkation following Search and Rescue (SAR)** (art. 47-49), the EC will assess the predicted needs for the relevant MS in its yearly Migration Management Report<sup>30</sup>, such as for instance the relocation places needed, and will determine the contribution expected from other MS according to a distribution key<sup>31</sup>. The MS must notify the EC their desired solidarity contribution (in a SAR solidarity response plan). If the EC identifies shortages compared with the needs, a Solidarity forum will be convened to adjust MS's contributions to the needs. The EC will then adopt an implementing act outlining the solidarity measures indicated by the MS and will set up a solidarity pool for each MS under pressure. In case of shortfall of relocation pledges, a complex critical mass correction mechanism is foreseen to adjust MS contribution and open up the possibility at this stage of also contributing through return sponsorship. EU agencies (i.e. asylum agency, Frontex) are involved in monitoring the use of the solidarity pool and informing the EC when needs become critical. As regards relocation, this concerns only asylum applicants who are not in the border procedure.

In case of the solidarity mechanism related to **migratory pressure** (art. 50-53), a report will be drafted by the EC (on request of a MS invoking pressure, or upon the EC's own initiative). Based on a wide range of criteria, the report assesses the capacity of the MS and the measures needed to alleviate pressure by setting up a solidarity response plan. This time, MS have wider solidarity options available from the beginning of the process, including relocation and return sponsorship. A similarly complex adjustment system, as described above, is also foreseen to meet the needs. Under this scenario, relocation can also apply to beneficiaries of international protection.

Besides the **extreme complexity of this solidarity mechanism, which raises doubts on its efficiency to alleviate pressure on border states and to create a predictable and sustainable solidarity mechanism**, an element that is triggering much debate and controversy is the introduction of **"return sponsorship"** (art. 55) as one of the possibilities for contributing to solidarity. Under this concept, a "sponsoring country" can facilitate the return<sup>32</sup> of a person subject to a return decision to the country of origin within eight months. If the return cannot be implemented in this period, the person will be transferred to the "sponsoring country" in order to continue the return procedure from there. The legal responsibility to implement the return remains nevertheless within the country that issued the return decision in the first place. Caritas Europa is **concerned that "return sponsorship" can be considered as a "solidarity" option on the same level as relocation**. In addition, its **practical implementation raises several questions**. How will this mechanism work in practice and facilitate return while it creates an additional layer of bureaucracy and actors involved, thereby blurring responsibilities and accountability<sup>33</sup>? What safeguards are in place to ensure that the fundamental rights of people are respected and detention is avoided? In addition, in case of implementing complicated returns, the mechanism will lead to the unnecessary transfer of people, reinforcing limbo situations and greatly impacting on people's wellbeing and mental health.

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<sup>28</sup> Apart from these two scenarios where solidarity is compulsory, any voluntary solidarity contribution is possible at any time (art. 56).

<sup>29</sup> Financial support from the EC includes 12,000€ for the relocation of an unaccompanied child and 10,000€ for an adult.

<sup>30</sup> This report will set out the anticipated evolution of the migratory situation and the preparedness of the EU and the MS (including projected disembarkations and capacity needs).

<sup>31</sup> Art. 54: 50% size of the population and 50% GDP.

<sup>32</sup> The sponsoring states can choose which nationality to return, and measures to facilitate the return can, for instance, include: providing counselling and financial or in-kind assistance on return and reintegration, support to policy dialogue with country of origin to facilitate readmission including obtaining a valid travel document, organising the practical arrangements for the enforcement of return (charter flights).

<sup>33</sup> Who is accountable in case of return sponsorship? The MS that issues the return decision, the sponsoring MS, Frontex under its enhanced mandate on return?

In case of **crisis or force majeure** (see infra), the functioning of the solidarity mechanism is altered to allow for stronger solidarity (e.g. asylum seekers under border procedure can also be relocated), and the timeframe to implement a return decision under the return sponsorship before a transfer occurs is reduced to four months (instead of eight).

**Caritas Europa's recommendations:**

- We call for the **removal of return sponsorship** as an option and for amending the proposal to ensure that **relocation can be further incentivised** as the most substantial and efficient contribution to solidarity.
- The functioning of the **solidarity mechanism should be simplified** in order to create a predictable and sustainable solidarity mechanism.

#### 4. Crisis and Force majeure

The EC also issued a proposal for a **Regulation addressing situations of crisis and force majeure in the field of migration and asylum**<sup>34</sup>, which set out a series of **derogations to the rules on asylum, return and solidarity** foreseen under other legislative files within the Pact, and introduces a **temporary protection mechanism**.

A **crisis** is defined in the proposal (art. 1) as an exceptional situation of mass influx that renders the MS asylum, reception or return system non-functional (or in imminent risk thereof), and would thus have serious consequences for the functioning of the CEAS. **Force majeure** is not explicitly defined, but is referred to in the explanatory memorandum of the proposal as unforeseeable circumstances that the MS could not have prepared for, such as the COVID-19 pandemic and the political crisis witnessed at the Greek-Turkish border in March 2020 (p.4). In cases of crisis, a MS must make a request to the EC to confirm the existence of a situation of crisis, and by contrast, in cases of *force majeure*, the MS only needs to notify the EC of the situation.

Under these situations, **numerous exceptions and derogations** to the normal rules in other legislative files (asylum, solidarity, return) can be triggered, allowing MS to bypass legal obligation under the asylum acquis and having a **significant impact on asylum seekers**. In **cases of crisis**, a MS can apply the border procedure on the merit of applicants coming from a country with a recognition rate of 75% or lower. An eight week extension is foreseen in the duration of both the border asylum and return procedures, and detention would be more easily applicable, as there is a presumption of the risk of absconding unless proven otherwise<sup>35</sup>. In addition, if return sponsorship is not successfully implemented within four months, a transfer to the sponsoring state would occur (instead of within eight months). In addition, registration of asylum applications can be made within four weeks (extension possible until a total of twelve weeks maximum). In cases of **force majeure**, changes to the timeframes for the procedural provision under the solidarity mechanism and the determination of the MS responsible for an application are foreseen (e.g. related to take back/take charge transfers), as well as a four week period for registering an asylum application.

A welcomed element under a situation of **crisis** is the possibility to suspend the asylum application and grant **immediate protection** for twelve months<sup>36</sup> (art. 10) for applicants who are facing a high degree of risk of

<sup>34</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601295614020&uri=COM:2020:613:FIN>

<sup>35</sup> Art 5, to be read in conjunction with the recast return directive, [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-returning-illegally-staying-third-country-nationals-directive-634\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-returning-illegally-staying-third-country-nationals-directive-634_en.pdf)

<sup>36</sup> The EC shall adopt an implementing decision to authorise this measure, see art.10.4. It is worth underlying that a similar mechanism encompassed in the temporary protection directive, which is repealed by this proposal, was never applied by MS.

being subject to indiscriminate violence, in exceptional situations of armed conflict, and who are unable to return to their country of origin.

**Caritas Europa's recommendations:**

- In order to **avoid abusive and subjective use of the “crisis or *force majeure*” exceptions**, the derogations must be narrowed down and triggered only in truly exceptional situations. In this vein, the *Force majeure* criteria should be deleted, and possibilities for MS to derogate from responsibilities to register asylum application should be limited.
- Art. 10, giving MS the possibility to **grant immediate protection status**, should be kept and implemented in practice.

## **5. Legal pathways to protection**

Recognising the increased need for protection globally, as UNHCR assessed that 1.45 million refugees worldwide are particularly vulnerable and in need of resettlement<sup>37</sup>, the EC issued **Recommendations on legal pathways to protection in the EU**<sup>38</sup> (non-binding document). It calls on the MS to **expand resettlement places and complementary pathways** such as community sponsorship<sup>39</sup> and to improve the quality of these programmes<sup>40</sup>. Family-related humanitarian admission programmes, as well as complementary pathways for education and work (e.g. university/study schemes, labour mobility programmes in cooperation with the private sector) are also encouraged, including through EU funds available under the EU budget (e.g. AMIF). To boost the EU's cooperation in this field, the EC also calls for the swift adoption of the EU framework on resettlement, currently being negotiated by the EP and the Council.

In order to alleviate pressure from third countries hosting large numbers of refugees, the EC encourages MS to focus their resettlement efforts on **Turkey, Lebanon, Jordan, and countries on the Central Mediterranean route** (Libya, Niger, Chad, Egypt, Ethiopia, Sudan, as well as emergency evacuation mechanism from Libya to Niger and Rwanda.).

While Caritas Europa welcomes this positive narrative and efforts, we are concerned by the **implementation of the 29,500 resettlement pledges** that MS had committed to resettle by the end of 2020 at the 2019 Global Refugee Forum<sup>41</sup>. Indeed, taking into consideration the challenges raised by the COVID-19 pandemic<sup>42</sup>, the EC invites MS to implement the 29,500 pledges target over a two-year period (1/01/20 – 31/12/21), instead of just one. New resettlement programmes should be considered from 2022 onwards, taking into account the Asylum and Migration Fund that will be available under the upcoming EU budget for 2021-2027 (§21). This means that there is a significant **risk that no new resettlement pledges will be made in 2021**, unless MS decide to cover it under state-funded national resettlement programmes.

<sup>37</sup> <https://www.unhcr.org/protection/resettlement/5ef34bf7/projected-global-resettlement-needs-2021.html>

<sup>38</sup> [https://ec.europa.eu/info/sites/info/files/commission\\_recommendation\\_on\\_legal\\_pathways\\_to\\_protection\\_in\\_the\\_eu\\_promoting\\_resettlement\\_humanitarian\\_admission\\_and\\_other\\_complementary\\_pathways.pdf](https://ec.europa.eu/info/sites/info/files/commission_recommendation_on_legal_pathways_to_protection_in_the_eu_promoting_resettlement_humanitarian_admission_and_other_complementary_pathways.pdf)

<sup>39</sup> Several Caritas organisations are implementing sponsorships programmes and humanitarian corridors on the ground, see for instance our joint publication with ICMC Europe under the AMIF-funded Share project on fostering community sponsorship in Europe, <https://www.caritas.eu/community-sponsorship-europe/>

<sup>40</sup> By, for instance, providing qualitative pre and post departure preparation, adequate services and integration upon arrival, proper monitoring and evaluation.

<sup>41</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_6794](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6794)

<sup>42</sup> According to UNHCR and IOM, due to COVID-19, more than 10,000 people had their resettlement delayed, <https://www.unhcr.org/news/press/2020/6/5ecb85be4/joint-statement-un-refugee-chief-grandi-ioms-vitorino-announce-resumption.html>

**Caritas Europa's recommendations<sup>43</sup>:**

- We call on EU MS to urgently **pick up on the implementation of the 29,500 resettlement pledges in 2020** and allow those waiting for resettlement to enter EU countries with respect to COVID-19 sanitary measures.
- We call on MS to make new and **additional pledges of at least 35,000 places for 2021**, taking into account priority situations, identified by UNHCR, and increasing resettlement from the largely EU-funded emergency transit mechanisms in Niger and Rwanda.
- In order to overcome COVID-19 challenges and jump start resettlement processing, we call on states to promote **dossier-based referrals** and innovative remote interview modalities as efficient methods of selection for resettlement.
- We call on the EC to encourage MS to substantially address the resettlement backlog through **political leadership and targeted management of financial support**. The new EU budget should provide for **sufficient lump sum financial support** available for MS to incentivise them to step up resettlement.
- In addition to resettlement, we encourage MS to develop and increase **complementary pathways** such as community sponsorship, in close collaboration with CSOs and refugees. We for instance suggest to implement **European Humanitarian Admission Programmes** and to introduce a **European humanitarian visa**.

**6. Regular migration and integration**

A welcome **change in narrative by the EC towards regular migration** can be noticed in the **Communication on a New Pact on Migration and Asylum**<sup>44</sup>. The EC adopts a more positive approach to labour migration, stressing EU's labour needs and demographic challenges.

Nevertheless, the EC focuses **mostly on the ambition to attract highly skilled migrants**. For this purpose, the EC announces the upcoming launch of a **talent pool** that will be used as a catalyst to step up cooperation with third countries on migration, and calls for the completion of the negotiation of the Blue card directive. While recognising migrants' positive contribution to our societies and economies, including during the COVID-19 pandemic, the Communication overlooks low skilled migrants, despite the crucial role they play in keeping several segments of our economies (e.g. agriculture, food production and distribution, healthcare) up and running during these difficult times (and beyond)<sup>45</sup>. The EC mentions **upcoming legislative reforms** of the Long-term residence directive and the Single Permit Directive to harmonise the admission and residence conditions for the end of 2021, without providing further details, while a consultation on the future of EU legal migration was launched.

The Communication also outlines the new **EU Action Plan on Integration and Inclusion** for 2021-2027<sup>46</sup>, with aim of providing strategic guidance and setting out concrete actions to foster inclusion of migrants and broader social cohesion. The EC will also bolster the inclusion of migrants' voices in asylum and migration policies by setting up an **expert group** made of experts with a migrant background.

<sup>43</sup> For more recommendations, see this joint statement "resettlement can't wait", co-signed by Caritas Europa:

[https://www.caritas.eu/wordpress/wp-content/uploads/2020/09/NGO-joint-statement-Sept-2020\\_RST-cannot-wait\\_final.pdf](https://www.caritas.eu/wordpress/wp-content/uploads/2020/09/NGO-joint-statement-Sept-2020_RST-cannot-wait_final.pdf)

<sup>44</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM:2020:609:FIN>

<sup>45</sup> <https://www.caritas.eu/migrants-and-covid-19-challenges-and-opportunities/>. Caritas Europa has well documented and acknowledged the important contributions migrant make to our economies and social fabric, see our Common Home publication: <https://www.caritas.eu/common-home-eu/>

<sup>46</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/pdf/action\\_plan\\_on\\_integration\\_and\\_inclusion\\_2021-2027.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/pdf/action_plan_on_integration_and_inclusion_2021-2027.pdf)

Caritas Europa welcomes the efforts made to change the narrative on migration and promote integration and social inclusion. Nevertheless, we are **disappointed by the little attention that is being given to labour migration** in the Pact, and the lack of concrete proposals to increase opportunities to facilitate regular migration and human mobility, in contrast with the overwhelming focus on return.

**Caritas Europa's recommendations:**

- We call on the EU and its MS to adopt a **more positive narrative on migration** and to recognise the positive contributions migrants make to our societies and economies. This shift should be accompanied by ambitious **integration and social inclusion measures**, to enable migrants to fully flourish, and contribute and participate in the destination countries.
- We call on the EC to launch concrete initiatives to encourage MS to **facilitate labour migration** opportunities, including for **low and medium skilled workers**.
- Labour migration opportunities and labour contracts must provide migrants with a **stable and secure status** that opens up access to the social security system, in order to avoid precariousness, fall into irregularity and destitution. Taking due consideration of the national context and reality, **states should be encouraged to study regularisation options on a case-by-case basis**.
- Initiative to attract talents from abroad (e.g. the talent pool) must **avoid the “brain drain”** in developing countries<sup>47</sup>.

## **7. Saving lives at sea**

Shipwrecks and deaths of migrants are increasing while search and rescue capacities are very limited due to the lack of engagement from EU MS and the legal and administrative obstacles put forward by some MS to undermine NGO SAR (search and rescue) activities<sup>48</sup>.

Responding to concerns from the EP<sup>49</sup> and CSOs that the “facilitation package” (i.e. EU legislations tackling smuggling to the EU) leads to the unjustified **criminalisation of humanitarian assistance towards migrants, including while saving lives at sea**, the EC published a “**guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence**”<sup>50</sup>. This non-binding document reminds MS of their obligation under international and customary law to require shipmasters to provide assistance to vessels or people in distress at sea. Consequently, the EC says that the Facilitation Directive must be interpreted in such a way that **humanitarian assistance that is mandated by law cannot and must not be criminalised**. It adds that the criminalisation of NGOs carrying out SAR operations at sea, while complying with the relevant legal framework, amounts to a breach of international law, and therefore is not permitted by EU law<sup>51</sup>. This clear position is welcomed and echoes the EC President Ursula von der Leyen’s 2020 State of the Union address<sup>52</sup>: “Saving lives at sea is not optional”.

<sup>47</sup> See this blog on Putting Talent Partnerships into Practice: <https://www.cgdev.org/blog/eu-migration-pact-putting-talent-partnerships-practice>

<sup>48</sup> <https://www.iom.int/news/devastating-shipwreck-libya-claims-more-70-lives-iom>

<sup>49</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONGM+MOTION+B8-2018-0314+0+DOC+PDF+V0//EN>

<sup>50</sup> [https://ec.europa.eu/info/sites/info/files/commission-guidance-implementation-facilitation-unauthorised-entry\\_en.pdf](https://ec.europa.eu/info/sites/info/files/commission-guidance-implementation-facilitation-unauthorised-entry_en.pdf)

<sup>51</sup> Importantly, the guidance specifies on page 7 that “when Article 1 of the Facilitation Directive criminalises the facilitation of unauthorised entry and transit, while giving Member States the possibility not to impose sanctions in cases where the purpose of the activity is to provide humanitarian assistance, it does not refer to humanitarian assistance mandated by law, as this cannot be criminalised”.

<sup>52</sup> [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655)

Nevertheless, Caritas Europa regrets that the **guidance fails to require MS not to criminalise solidarity acts carried out on land to support migrants** (e.g. food distribution, providing shelters). Indeed, multiple evidence<sup>53</sup>, including our own position paper<sup>54</sup> have shown that this type of solidarity is too often criminalised or stigmatised. The EC acknowledges the concerns that we and other actors have raised during several consultations, and refers to this issue in a “policy recommendation” in the guidance. The EC says that EU law does not intend to criminalise humanitarian assistance, and **invites MS to implement the “humanitarian exemption clause”** provided for in the facilitation directive that allows MS to exclude humanitarian assistance from criminalisation<sup>55</sup>. This timid language is rather disappointing given how widespread the problem is.

Having regard to the persistent lack of coordination during SAR and disembarkation operations, and responding to demands from some MS to issue a code of conduct on NGO SAR activities, the EC issued **Recommendation calling to increase cooperation among MS concerning SAR operations carried out by private vessels**<sup>56</sup>. This document alludes to NGO SAR activities, calling on private vessels to ensure safety on board and appropriate registration, and reactivates the debate on the alleged “pull factor”<sup>57</sup> that NGO SAR would constitute by stating that: “It is essential to avoid a situation in which migrant smuggling or human trafficking networks [...] take advantage of the rescue operations conducted by private vessels in the Mediterranean”. The EC will set up an **Interdisciplinary Contact Group** in which MS can cooperate and coordinate activities in order to implement this Recommendation, in liaison with other actors<sup>58</sup>.

Caritas Europa regrets that the recommendation seems to imply that NGOs are not complying with safety standards and cooperating with the relevant national authorities, while being very lenient on the lack of cooperation among MS to promptly provide assistance to people in distress at sea and a safe port of disembarkation. Similarly, we are concerned by the silence on activities carried out by the Libyan coast guards, which lead to increased returns to Libya and widespread and persistent infringement of human rights<sup>59</sup>. Another omission is the absence of a reference to the need to step up MS SAR capacity and to **set up an EU coordinated search and rescue mission to prevent deaths at sea**.

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<sup>53</sup> [http://www.resoma.eu/sites/resoma/resoma/files/policy\\_brief/pdf/Final%20Synthetic%20Report%20-%20Crackdown%20on%20NGOs%20and%20volunteers%20helping%20refugees%20and%20other%20migrants\\_1.pdf](http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/Final%20Synthetic%20Report%20-%20Crackdown%20on%20NGOs%20and%20volunteers%20helping%20refugees%20and%20other%20migrants_1.pdf)

<sup>54</sup> <https://www.caritas.eu/criminalisation-solidarity-2/>

<sup>55</sup> Art 1 (2) of the directive

<sup>56</sup> [https://ec.europa.eu/info/sites/info/files/commission-recommendation-\\_cooperation-operations-vessels-private-entities\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/commission-recommendation-_cooperation-operations-vessels-private-entities_en_0.pdf)

<sup>57</sup> <https://cadmus.eui.eu/handle/1814/65024>

<sup>58</sup> The Contact Group will monitor the implementation of the Recommendation and issue, once a year, a report to the Commission. The Commission will take into account the work of the Contact Group and the implementation of this Recommendation when developing the European Asylum and Migration Management Strategy and the annual Migration Management Reports set out in the Asylum and Migration Management Regulation, as appropriate.

<sup>59</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26337&LangID=E>,

<https://www.amnesty.org/en/latest/news/2020/09/libya-new-evidence-shows-refugees-and-migrants-trapped-in-horrific-cycle-of-abuses/>

**Caritas Europa's recommendations:**

- We call on EU MS to ensure that, in addition to saving lives at sea, **solidarity carried out on land to support migrants (e.g. food distribution, providing shelter) is not criminalised or stigmatised**. The Facilitation package should be revised to ensure that the criminalisation of all types of humanitarian assistance is prevented<sup>60</sup>.
- We call on the EC to ensure that the **upcoming 2021-2025 action plan against migrant smuggling** clearly disentangles NGO solidarity activity in land and at sea from smuggling, and calls on MS not to criminalise or undermine it.
- We call for the establishment of an **EU coordinated search and rescue mission in the central Mediterranean Sea** in order to step up rescue capacity and complement NGO SAR efforts.
- We call on MS to efficiently cooperate among each other and with private vessels to ensure **prompt rescue operations and disembarkation into a safe MS**. We recall the UNHCR position that Libya is not a safe place of disembarkation<sup>61</sup>.

**8. Cooperation with third countries**<sup>62</sup>

**Enhanced cooperation with countries of origin and transit of migrants remains high on EU's agenda**, and is outlined in the EC Communication on the Pact. The EC ambitions to create tailor-made win-win partnerships with third countries by leveraging different policy areas available (e.g. trade, development aid, foreign affairs, visa policies) to increase cooperation on migration management, with a particular focus on African and neighbouring countries. Despite a narrative that seems to take into account the interests and sensitivities of partner countries more and that aims to foster relationships on a so-called equal footing, the overall approach seems to be in **continuity with the past by privileging the EU's priorities** (i.e. fighting irregular migration and return and readmission) over partners' interests (e.g. legal migration). Such an approach not only undermines the potential of building a more balanced partnership with partner countries, but also demonstrates the failure from the EU side to 'walk the talk' and uphold its previous commitments to expand channels for legal migration<sup>63</sup>.

The narrative on **tackling the root causes of irregular migration** persists, with **references to development aid and external policy instruments** (e.g. the Neighbourhood, Development and International Cooperation Instrument (NDICI) and its 10% migration target) to fully incorporate migration in the programming. This is problematic given that this approach focuses on short-term tools, stopgap projects and targeted interventions, when what is needed is a holistic, sustainable and long term approach aimed at addressing structural problems, such as poverty and inequalities more broadly. Positive and negative incentives (often referred to as "conditionality" by CSOs) are outlined in the communication to enhance third countries' cooperation on return and readmission. The Communication, for instance, refers to the recently reviewed **EU visa code**, which includes favourable or restrictive measures related to third countries' visa application, depending on the level of cooperation on readmission<sup>64</sup>. Through its upcoming **voluntary Return and Reintegration Strategy**, the

<sup>60</sup> See more detailed recommendations against the criminalisation of solidarity in our position paper:

<https://www.caritas.eu/criminalisation-solidarity-2/>

<sup>61</sup> <https://www.refworld.org/pd/fid/5f1edec24.pdf>

<sup>62</sup> See also Concord first reaction, <https://concordeurope.org/resource/reaction-to-new-pact-on-migration-and-asylum/>

<sup>63</sup> Global Approach to Migration and Mobility, European Agenda on Migration, Valletta Plan, EUTF for Africa, current Cotonou Agreement.

<sup>64</sup> See art 25 (a) on cooperation on readmission of the EU visa code, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0810-20200202&qid=1605261798419>. The EC will assess at least once a year the level of cooperation of third countries on readmission, and report to the Council. Following this assessment, the Commission can propose to apply restrictive visa measures, or in case of good cooperation, propose favourable visa measures.

EU also wants to increase third countries' capacities, ownership in voluntary return and reintegration programmes, and to link these to development initiatives and national strategies (Frontex, under its reinforced mandate on return, will be involved in the implementation of the Strategy).

The EC sees the expansion of **legal pathways** to Europe as a positive incentive that can be offered to third countries. But despite the plan to develop "EU Talent Partnerships" with third countries to facilitate legal migration and mobility, the Communication does not provide concrete details on how to enhance legal pathways, the area most susceptible to arouse third countries' interests.

Last but not least, the **EC proposal for a Regulation on asylum and migration management** reinforces the link between the internal and external aspects of EU asylum and migration policies. Under art. 7 on the "Cooperation with third countries to facilitate return and readmission", the EC can issue a report to the Council when a third country is not cooperating sufficiently on readmission, proposing measures to improve the cooperation<sup>65</sup>.

#### **Caritas Europa's recommendations:**

- Cooperation with third countries on migration management must be subject to **human rights safeguards and accountability mechanisms**, to ensure that the human rights of migrants and the principle of *non-refoulement* are respected. Cooperation with third countries before these mechanisms are in place should stop. Instead, the EU and its Member States should adopt cautious and responsible conduct and only engage in cooperation arrangements if and when minimum standards, a minimum level of accountability and scrutiny, and democratic handling can be ensured. Similarly, cooperation with countries disregarding human rights such as Libya must stop.
- In order to preserve constructive relations with third countries, including on issues beyond migration, a **true partnership** on equal footing that avoids conditionality and **reflects in its priorities each side's interests** is needed. This must be reflected in the EU-Africa relationships that are being currently reshaped<sup>66</sup>.
- **Development aid** should never be instrumentalised to meet the EU's security and migration interests (i.e. stemming migration), but should rather primarily focus on addressing poverty and inequality in line with partner countries' national development strategies and needs to access much-needed assistance.
- **Facilitating legal pathways and mobility**, including through facilitated visa processing, must be significantly stepped up if the EU truly aims to develop win-win partnerships with third countries.
- **Readmission** of migrants should always respect the principle of *non-refoulement*, and **voluntary return and reintegration** programmes that provide potential candidates with an individual and tailor-made approach should be privileged<sup>67</sup>.

<sup>65</sup> See also Art. 3 on "Comprehensive approach to asylum and migration management" that encompasses among others mutually-beneficial partnerships and close cooperation with relevant third countries to be taken into account to address the entirety of the migratory routes that affects asylum and migration management, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:610:FIN>

<sup>66</sup> See also Caritas Europa and Caritas Africa's position paper on the EU-Africa strategy, [https://www.caritas.eu/wordpress/wp-content/uploads/2020/06/200515\\_CE-Position-Paper-on-New-Africa-Strategy\\_FINAL\\_corrected.pdf](https://www.caritas.eu/wordpress/wp-content/uploads/2020/06/200515_CE-Position-Paper-on-New-Africa-Strategy_FINAL_corrected.pdf), and Caritas Europa and the Friedrich Ebert Stiftung's briefing on "The impact of EU external migration policies on sustainable development: A review of the evidence from West, North and the Horn of Africa", [https://www.caritas.eu/wordpress/wp-content/uploads/2020/10/201012-Final-CE\\_FES-Policy-brief-The-impact-of-EU-external-migration-policies-on-sustainable-development.pdf](https://www.caritas.eu/wordpress/wp-content/uploads/2020/10/201012-Final-CE_FES-Policy-brief-The-impact-of-EU-external-migration-policies-on-sustainable-development.pdf)

<sup>67</sup> For more details on Caritas Europa's recommendation on return policies, including voluntary return and reintegration programme see, <https://www.caritas.eu/human-rights-and-human-dignity-at-the-centre-in-return-policies/>

## **Conclusion**

With this position paper, Caritas Europa aims to bring to the attention of policy makers at the EP and the Council the problematic elements contained in the Pact, and to further develop and promote the positive ones. The Pact should preserve and expand access to asylum in Europe, and lead to better and fairer asylum policies, with high procedural standards and safeguards.

Border procedures that have been problematic in practice - leading to sub-standard procedures and overcrowded facilities - should be avoided. Similarly, the EU border territories should not give rise to the erection of new migrant detention camps. The mandate of the proposed independent monitoring of fundamental rights should be expanded to go beyond the border screening phase, and a strong accountability system should be put in place in case of wrongdoing. Return policies should respect the principle of *non-refoulement* and be anchored in respect of human rights and human dignity, with a preference for voluntary return and reintegration.

The success of the Pact will be assessed upon its capacity to avoid errors from the past and create a fair and stable solidarity and responsibility sharing mechanism among MS. The solidarity mechanism proposed should be amended to lead to a less bureaucratic and simpler system that could ensure prompt and seamless solidarity for the MS under pressure. We advise for the withdrawal of the controversial “return sponsorship” which could lead to tremendous suffering for migrants due to the unnecessary transfer to other MS and whose practicality is called into question. Substantial solidarity through relocation should be privileged and encouraged.

A big disappointment with the pact is the lack of concrete ambition on regular migration, despite a positive change in narrative. Given the increasing need of protection worldwide, the recommendations on safe pathways to protection should lead to new pledges for resettlement and complementary pathways, despite the COVID-19 pandemic. As rightly highlighted by the EC, migrants are part of Europe and positively contribute to our society and economy. The EU needs labour migrants with different skills set, and we hope that an ambitious proposal on labour migration will be proposed by the EC in the near future. Strong social inclusion and integration policies are also needed to enable migrants to flourish in the countries of destination and promote welcoming and peaceful societies. Considering the new Action Plan on Integration and Inclusion for 2021-2027 is non-binding, we especially urge MS to diligently implement the new Action Plan and to recognise the contributions of migrants to our society.

The EC rightly reiterated that saving lives at sea is a legal obligation and that SAR activities should never be criminalised. Beyond this needed reminder, MS should increase their SAR capacities and cooperate amongst each other to ensure prompt and safe disembarkation of rescued migrants. To avoid the numerous fatal incidents happening at sea, an EU-coordinated SAR mission is urgently needed.

Last but not least, cooperation with countries of origin and transit should be conditional on the respect of human rights and provide accountability mechanisms. Relationships with third countries should be based on genuine mutual interests, and should expand opportunities for regular migration.

We hope that the negotiation in the Council and the EP will bring about constructive discussions and amendments that will result in strengthening asylum protections, and human rights and lead to more functional and fairer migration policies.