



Protestant Church  
in Germany

**Brussels Office**

## **Contribution of the Brussels Office of the Protestant Church in Germany (EKD) to the Asylum Report 2022 of the European Union Agency for Asylum**

The Brussels Office of the Protestant Church in Germany (EKD) thanks the European Union Agency for Asylum (EUAA) for the opportunity to contribute to the Asylum Report 2022.

### **Human rights situation at the EU's external borders**

#### **I. Current practices by certain EU Member States**

In 2021, there have been numerous reports and documentations about systematic illegal “pushbacks” of refugees and migrants at the EU's external borders by a certain number of EU Member States. According to those verified reports by journalists and NGOs, pushbacks often involve excessive use of force by EU Member States' authorities operating at external borders, as well as degrading and inhuman treatment of refugees and migrants and their arbitrary detention. Especially at the Croatian-Bosnian border, the Polish-Belarusian border and the Greek-Turkish border, it has become evident that EU Member States do not fully respect international and European law. The current practices of pushbacks are in clear contradiction to international law and erode EU values as enshrined in the EU treaties. Given these worrying developments, a stronger involvement of the EUAA in monitoring and assessment of the Common European Asylum System (CEAS) and providing Member States with the necessary operational and technical assistance, in particular in situations of disproportionate pressure is urgently needed. Mechanisms to guarantee adherence to fundamental rights and importantly to the principle of non-refoulement must be established with the help of the EUAA.

#### **II. Legal developments**

The above mentioned worrying trends in the practice of frontline Member States to ignore CEAS rules and procedures, to establish a “culture of pushbacks”, to limit reception conditions, to excessively use detention and to restrict access to territory and the asylum procedure are also mirrored in recent legislative proposals of the European Commission despite the fact that the debate on the New Pact on Migration and Asylum is ongoing.

On December 14, 2021, the European Commission presented a Proposal for a Regulation addressing situations of instrumentalisation in the field of migration and asylum (COM(2021) 890 final, 14th December 2021). In our view, this proposal raises many questions as well as concerns about its necessity and proportionality.

First, it can be noted that the chosen definition of instrumentalisation is very broad and goes too far in our view. We are concerned that the definition of instrumentalisation could thus cover a variety of

situations at the EU's external borders. In the proposal it is not clear how and by whom the intention to destabilise the EU or a particular Member State should be assessed. Also, the terminology in relation to actions that may “endanger the essential functions of the State” would give Member States a wide margin of appreciation to determine a situation of instrumentalisation. The proposed definition could inspire certain Member States to invoke on a regular basis the derogations and thus systematically suspending existing CEAS provisions contradicting the goal of greater convergence and more harmonisation of the EU asylum acquis.

In the same regard, there are also open questions regarding the ratio between the new proposed regulations and the New Pact on Migration and Asylum, which was originally intended to take a holistic approach to reform the CEAS. For example, the proposal for a regulation addressing situations of instrumentalisation contains similar provisions to those already foreseen in the New Pact - in particular within the framework of the regulation addressing situations of crisis and *force majeure* in the field of migration and asylum (such as the extension of asylum border procedures to up to 20 weeks, including registration).

The European Commission justifies the introduction of a new regulation with the fact that the situation of instrumentalisation of migrants in contrast to a "massive flow of migrants" has not been considered so far. By introducing similar or more far-reaching measures in a separate legislative act, the proposal however, risks further complicating and disuniting the ongoing legislative process under the New Pact.

Derogatory measures in the event of an instrumentalisation situation could also lower the standards of protection for migrants in the context of asylum border procedures as proposed in the amended regulation establishing a common procedure for international protection in the Union (COM(2020) 611 final). The current infrastructure at the borders of some Member States is not sufficient to meet the requirements of the Commission's proposals and to guarantee adequate access to international protection and humane reception conditions. The proposal to reduce material reception conditions to a minimum would further exacerbate this problem - especially with regard to a possible period of up to five months within the framework of asylum border procedures. Finally, the proposal does not provide a convincing argument why persons arriving at the EU's external borders and exposed to instrumentalisation by third countries should be treated differently from other applicants for international protection.

### **III. Implications for the Common European Asylum System (CEAS)**

Through pushbacks, the excessive use of asylum border procedures and the limitation of material reception conditions, some Member States are creating facts that are contrary to the CEAS standards which entail dealing with refugees and migrants in a rights-based and humane manner. These practices set false precedents. The fact that they are now embedded by European legislation – at least to some extent – is a very worrying development. The core idea of a solidary and humane CEAS and its credibility could thus be undermined. At the same time, the consistent and effective implementation of the EU asylum acquis is put at risk.

### **III. Implications for the EUAA**

In view of these developments and remarks, we welcome the fact that finally the European Asylum Support Office (EASO) was transformed into the European Union Agency for Asylum and that the new Regulation has entered into force. We hope that the new mandate will help to improve the functioning and implementation of the CEAS in force today. The harmonisation of the European asylum systems is

more necessary than ever and remains a huge challenge which the EUAA, among other actors, needs to address with special regard to the respect of fundamental rights. We hope that the EUAA will play a pro-active role when it comes to tackling shortcomings and insufficiencies of the national asylum and reception systems as well as to assessing their capacity and preparedness to manage situations of crisis.

We very much regret – given the above mentioned developments – that the Monitoring Mechanism will only partly enter into force at the end of 2023, and partly, once the various other CEAS legislative proposals are agreed to. We think that the EUAA should as soon as possible be able to monitor the operational and technical application of EU legal obligations as they are being undermined on a daily basis. Nevertheless, the EUAA should advocate towards EU Member States for the use of an effective complaints mechanism in the event of violations of fundamental rights.

The EUAA should also assist in guaranteeing humane reception conditions in accordance with international standards. In addition, the agency should help to ensure that all people arriving at the EU external borders can benefit from the right to legal assistance and legal remedy throughout the asylum border procedure.

Brussels, 17 February 2022