



MIGRATION AND ASYLUM – TOWARDS A JOINT EUROPEAN RESPONSE



NEXT STEPS IN IMPLEMENTING THE NEW PACT

A compilation of essays to foster awareness, expertise, and understanding regarding current developments, positions, and challenges in the further process of the implementation of the New Pact on Migration and Asylum.

March 2024



CONTENT

01. EDITORIALS

Markus FERBER MEP	5
Prof. Nicola ANTONETTI	6

02. INTRODUCTION

On the Way to a Common European Response to Asylum and Migration Angela OSTLENDER / Dr. Thomas LEEB	7
--	---

03. FOREWORD

Margaritis SCHINAS	9
--------------------------	---

04. NEW STRUCTURES AND STRATEGIES FOR UNRESOLVED CHALLENGES

Fairer, Better, Faster, Stronger: Introducing a New EU Model for Asylum and Migration Nicole de MOOR	11
The New Pact on Migration and Asylum: No Harmonization without Convergent Implementation Nina GREGORI	13
After the Pact: Can Europe now Build a Credible Migration Policy? Hugo BRADY	15

05. THE INTERNAL DIMENSION - FINDING A BALANCE BETWEEN RESPONSIBILITY AND SOLIDARITY

Unpredictability Lies Ahead: The Challenges of the New Pact for the EU and Italy Luca BARANA	18
The Internal Dimension in the New Pact: A Glass Half-Full Dr. Angeliki DIMITRIADI	20
Solidarity and Responsibility: Germany's Role in the EU's Migration Dilemma Dr. Raphael BOSSONG	22
The New Pact and the Differing Positions of Central and East European Member States Vit NOVOTNÝ	24

06. THE EXTERNAL DIMENSION - COOPERATION WITH THIRD COUNTRIES

Shifting Horizons: European Union's Asylum and Migration Pact on Africa Dr. Margaret MONYANI	27
How the EU Could Deliver on the Pact's Predicaments Through More Balanced External Cooperation Dr. Eleonora MILAZZO	30
The External Dimension - Cooperation with Third Countries Dr. Laurence HART	33
The External Dimension of Migration - Challenges Ahead Orsolya RACZOVA	35

07. CONCLUSIONS

The New Pact on Migration and Asylum: What is New, What is Challenging and the Way Forward Dr. Loredana TEODORESCU	38
---	----

01. EDITORIALS

EDITORIAL

Markus FERBER MEP
Chairman of the Hanns Seidel Foundation

Since the peak of the migration crisis in 2015, the European Union (EU) has been striving to implement joint measures for an orderly asylum system and improved control of external borders. Regrettably, the existing EU migration system has proven to be ineffective, marked by porous borders, human trafficking, and a fragmented distribution of asylum seekers. Attempts to reform this dysfunctional system have encountered challenges, but in 2023, an agreement was finally reached on key elements of the new asylum pact.

The core idea of the new system is to determine whether an asylum application has any chance of success already at the external border and to ensure better cooperation between the Member States for a more equitable distribution of the primary burden. Those not granted asylum in Europe must be returned, with simultaneous efforts to provide asylum and adequate protection to those in need and promote fair distribution within the Member States. Navigating the complexities of this system is crucial to avoid playing into the hands of smugglers.

Despite delays in negotiating all aspects of the pact, there is optimism about developing a robust, effective, and fair system. At the same time, agreements with countries of origin and transit aim to support their economies and curb irregular migration. These countries should be interested in receiving more investment from European companies to create job opportunities and dissuade young people from leaving. Our interest in reducing irregular immigration will align with these efforts. However, there is also a need to open our borders to address the shortage of skilled workers. Still, in doing so, we must emphasize the importance of striking the right balance between reducing irregular migration and facilitating regular migration.

Furthermore, a united and strengthened EU in security policy is essential to counter current and future threats while upholding fundamental values, aptly described by the metaphor of “high walls with large doors.”

Given these challenges, the Brussels Office of the Hanns Seidel Foundation and the Istituto Luigi Sturzo have extended their successful dialogue series initiated in 2021. This initiative brought together experts and stakeholders from different sectors and countries to foster collaboration, share perspectives, and lay the groundwork for further discussions.

This publication distills insights from these discussions, making them accessible to a broader audience. Its purpose is to raise awareness of the diverse expectations and complex requirements and enhance expertise. In particular, we aim to foster a deeper understanding of the current positions and challenges that have emerged during the “New Pact on Migration and Asylum” negotiation process and outline the subsequent steps ahead.

To conclude, I extend my gratitude for the enriching collaboration with the Istituto Luigi Sturzo throughout this study and the preceding expert discussions. A special acknowledgment goes to Dr. Loredana Teodorescu for her exceptional support and expertise in this project.

ABOUT THE AUTHOR

Markus FERBER is Member of the European Parliament and Chairman of the Hanns Seidel Foundation



EDITORIAL

Prof. Nicola ANTONETTI

President of the Istituto Luigi Sturzo

Migration has always been a crucial topic for a country at the forefront like Italy. However, we believe this topic is also essential for the European Union and its future. The EU should be able to develop a real common approach. This is the only way to manage a transnational challenge. Still, according to the latest Eurobarometer, it is also what our citizens expect from the EU and what is needed to rebuild trust among Member States.

The 2015-2016 period clearly showed the weaknesses of our European migration and asylum system and prompted us to reform it. This reform process has never been easy because the Member States are experiencing the migration phenomenon differently, affecting their perceptions and interests. Some of them, like Germany, are in charge of almost one-quarter of all asylum claims submitted in the whole EU; some others, like Italy, are particularly under pressure for the first reception of irregular migrants coming through the Mediterranean Sea; and finally, for others, migratory flows are relatively new and to manage them is not one of their primary concerns.

The European Pact on Migration represents an important step in the right direction: a concrete proposal made by the European Commission to conceive a more effective and predictable system. It starts by acknowledging that migration needs to be managed at the European level and that differences should be overcome, addressing the interdependence between Member States' policies and decisions.

As the negotiations have been complicated and the devil is in the details, the Institute I am chairing, Istituto Luigi Sturzo, under the leadership of our Head of European and International Affairs, Dr. Loredana Teodorescu, who is also an expert on EU migration policy, together with the Brussels

Office of the Hanns Seidel Stiftung, decided to launch a dedicated initiative to discuss and analyse the different aspects of the Pact and exchange views and perspectives among experts coming from all over Europe. We created a space for open and inclusive discussion to foster a better mutual understanding and deepen the details of the Pact. We also built and consolidated a transnational community of experts and encouraged an exchange among them and institutional representatives.

The contribution to the current reflections on the Pact, which we developed through two series of dialogues held in 2021 and 2023, is summarised in this volume. At the same time, our initiative's primary outcome is represented by the format we promoted, opening a channel of dialogue and exchange.

For that, I am grateful for the fruitful cooperation that my Institute established with the Brussels office of the Hanns Seidel Stiftung, especially with its Director, Dr. Thomas Leeb, and its Programme Manager, Angela Ostlender, who made this project possible with their great support and precious inputs.

ABOUT THE AUTHOR

Prof. Nicola ANTONETTI is President of the Istituto Luigi Sturzo, Rome



02. INTRODUCTION

ON THE WAY TO A COMMON EUROPEAN RESPONSE TO ASYLUM AND MIGRATION

Angela OSTLENDER / Dr. Thomas LEEB
Hanns Seidel Foundation

The Common Asylum Policy and control of irregular migration were initially addressed under the third pillar (justice and home affairs) of the Treaty of Amsterdam (1997). Since then, the Dublin Convention (from September 1997) and, as of March 2003, the Dublin Regulation have played a crucial role in establishing common rules for asylum application treatment. Together with the Schengen Agreement, which eliminates personal controls at the EU's internal borders, the regulation specifies that only one EU Member State can be responsible for an asylum procedure.

In practice, however, this led to first-entry countries bearing the brunt of the impact, prompting calls for abandoning the regulation. On the other hand, preferred destinations for secondary migration were confronted with numerous unregistered or rejected asylum seekers. The inadequacies of the Dublin Rules became even more evident during the 2015/2016 so-called refugee crisis and triggered the discourse on the imperative need for system reform and increased solidarity for Member States most affected by irregular border crossings. The crisis revealed the system's weakness, especially in the organisation of resettlements, which proved challenging to implement in practice. For some countries, merely instituting temporary measures to provide relief to others was a red line, let alone considering permanent measures. In the following years, efforts shifted towards curbing irregular migration through more efficient external border security and combatting human trafficking and smuggling. EUNAVFOR Operation SOPHIA initiated operations to combat smugglers in the Mediterranean. Frontex's mandate was expanded in October 2016 and subsequently transformed into the European Border and Coast Guard Agency. Additionally, a decision was made to increase the number of experts supplied by Member States, particularly for the relevant agencies such as Frontex and the EU Asylum Support Office (EASO).

Internally, there was a strong focus on resettlement and relocation. This period was also marked by some Member States, including Germany and Austria, reintroducing border controls inside the Schengen Area. Attention to the connections between migration and development policies also grew, which was evident in the Valetta migration summit in November 2015, where European heads of state

and government met with their counterparts from African countries. An important step in partnerships with countries of origin and transit occurred when Member States agreed in February 2016 to establish a €3 billion-funded refugee facility for Turkey. Other attempts to manage migration through partnerships with third countries followed.

At the December 2018 summit, EU heads of state and government reaffirmed their call for the further development and implementation of a common European migration policy. However, despite persistent efforts and agenda-setting, a breakthrough remained out of reach.

After years of stalled negotiations, the "New Pact on Migration and Asylum", presented by the European Commission in September 2020, aimed to rebuild trust through improved and harmonised procedures and a new balance between solidarity and responsibility. Progress was made, notably in technical and operational areas, such as the establishment of a European Contact Group on Search and Rescue and the transformation of EASO into the EU Agency for Asylum (EUAA).

During the same period, the Belarusian regime orchestrated a hybrid attack by instrumentalising refugees and sending them across the EU's borders, adding an extra dimension to the negotiation process.

After a significant decrease in irregular border crossings during the COVID-19 pandemic, interest in migration waned again, making way for other challenges on the agenda. However, with the Russian war in Ukraine and a renewed increase in irregular border crossings, the New Pact regained momentum. This event also prompted the first application of the Temporary Protection Directive for displaced persons, initially introduced in 2001, and whose integration into the New Pact was now also up for debate.

Uncontrolled migration not only has a strong impact on the areas directly affected. Election results across the EU indicate growing dissatisfaction among the local population with current migration policies. Anti-immigration and xenophobic movements are gaining strength in many Member States, seriously jeopardising not only democracy, the rule of law, and social cohesion in these countries but also the European integration project as a whole. Given the domestic political sensitivity and the approaching end of the current legislative period, with European elections in June 2024, the pressure to reach an agreement and move forward was enormous.

As such, 2023 marks a significant stride forward on the political, more complex, and controversial issues, bringing us closer to a harmonised and less fragmented system for managing migration within the EU. This progress culminated in what protagonists had hailed as a “historic agreement” in late December. In the first half of 2023, the Swedish Council Presidency led efforts to advance negotiations, introducing new concepts such as the Asylum Procedure Regulation (APR), which aims at establishing a harmonised asylum procedure across the EU by streamlining procedural aspects and setting standards for asylum seekers’ rights. It also includes mandatory border procedures to assess the validity of applications at the EU’s external borders and only grant entry after a favourable decision.

Additional procedures include the Asylum and Migration Management Regulation (AMMR), intended to replace the current Dublin Regulation, and a New Solidarity Mechanism that makes solidarity mandatory for Member States but with flexibility regarding the choice of contribution. In this context, a minimum rate for financial compensation of individual resettlements was also set for the first time.

The Spanish Presidency of the Council of the EU actively worked to secure the agreement, following the interior ministers’ consensus on AMMR and APR on 8 June. Towards the year’s end, the Council and the European Parliament reached a consensus on five EU laws addressing various stages of asylum and migration management. These laws cover screening irregular migrants (Screening Regulation), collecting biometric data (Eurodac Regulation), defining asylum application procedures (Asylum Procedures Regulation), determining Member State responsibility (Asylum Migration Management Regulation), and fostering cooperation and solidarity between Member States in handling crises, including cases of instrumentalisation of migrants (Crisis and Force Majeure Regulation). The agreement received official approval from EU Member States’ representatives (Coreper) on 8 February 2024, along with an endorsement for three asylum and migration laws: a revision of the reception conditions directive, an update of the qualification regulation, and a regulation establishing an EU resettlement framework, previously agreed upon in 2022.

Expectations for the Belgian Council Presidency, leading in the first half of the 2024 election year, are substantial. There are only a few months left to conclude and to finalise the corresponding legal texts; it is crucial to maintain the delicate balance between complex factors and consider a wide range of concerns. These include protecting the rights of asylum seekers and humanitarian considerations,

promoting solidarity and ensuring fair burden-sharing, considering sovereignty and security issues, and taking into account economic, social, and legal aspects. Implementation also entails numerous hurdles and pitfalls that still need to be overcome. Replacing the current directives with new regulations should at least help address certain shortcomings through harmonised enforcement across the EU.

The following contributions from key actors and experts provide in-depth insights and critical analyses of various aspects of the New Pact on Migration and Asylum.

We hope you will find them insightful and wish you a good read.

ABOUT THE AUTHORS

Angela OSTLENDER is Programme Manager for European Dialogue at the Brussels Office of the Hanns Seidel Foundation and Dr. Thomas LEEB is Director of the Brussels Office of the Hanns Seidel Foundation



03. FOREWORD

FOREWORD

Margaritis SCHINAS
Vice-President of the European Commission

December 2023 marked a historic milestone in European history: a political agreement was reached on a European Pact on Migration and Asylum. The agreement broadcasts a powerful message of European unity.

The road from September 2020, when the Commission first presented its proposals, to December 2023 was a long one. However, from day one, some things remained constant. We were consistent in pursuing a genuinely European solution because we firmly believed that the problems we were experiencing did not arise because of Europe but due to a lack of Europe.

We were consistent in proposing realistic solutions that recognised that no two Member States experience migration in the same way. And that the unique concerns of each Member State deserve to be recognised, acknowledged and addressed. And we were consistent in looking for workable compromises. The result is a set of reforms that set the stage for fair, efficient, and sustainable migration management over the long term. A system where each EU Member State has the flexibility to address its challenges while none is left alone under pressure.

The changes the Pact will bring

The new system will, first and foremost, make the EU's external borders more secure. There will be a uniform screening of all irregular migrants entering the EU, which includes identity, health and security checks. Those unlikely to get asylum will have to go through mandatory, fast-tracked border procedures with streamlined processes for swiftly addressing asylum claims and efficiently processing returns. We will also send a clear message that the new European system will not tolerate abuse by ensuring quick returns of those rejected in these border procedures. This will be a far cry from the images witnessed five years ago of overcrowded reception centres, and people left for months on end with no decisions on their status.

The new rules will establish more effective asylum procedures with shorter time limits and stricter rules for abusive or subsequent applications. This will be achieved without compromising on our values. EU-wide standards for reception conditions will include earlier access to the labour market, better access to education for child migrants, and protection of vulnerable people.

For the first time, the Union will have a permanent solidarity mechanism in place, ensuring that no Member State under pressure is left alone and that everyone contributes. Member States will support each other with people solidarity (relocation or offsetting in case of secondary movements), operational support and financial contributions, including for projects in third countries. As of the Pact, solidarity is the norm, not the exception.

Finally, the EU will have in place a specific legal framework for handling situations of crisis, including instrumentalisation: a new legal instrument will provide for a stable and predictable framework at the Union level to manage situations of crisis, with a reinforced solidarity component ensuring that all the needs of the Member State concerned will be met. Derogations to cater to the specific instrumentalisation situation will provide Member States with robust and targeted means to protect our external borders while preserving access to asylum and respect for fundamental rights.

Making the Pact a reality

The Pact will bring a step-change in how migration is managed inside the European Union. Still, this new legal framework will only be as effective as its implementation and enforcement.

The Commission is therefore prioritising preparations for the implementation and operationalisation of the Pact. By June 2024, the Commission will present a Common Implementation Plan to set the path forward with a roadmap, timeline and milestones for EU and national actions. This will serve as a Roadmap, identifying the gaps and operational steps needed to ensure all Member States put in place the legal and operational capabilities required to start applying the new legislation by 2026 successfully.

Member States' efforts will also be accompanied by technical, operational, and financial support from the Commission and EU agencies. In terms of financing, a significant envelope is available, including an additional EUR 2 billion from the mid-term revision of the Multiannual Financial Framework earmarked to support the implementation of the Pact.

Continued efforts to tackle acute pressures and build partnerships that reflect our interests

Alongside the efforts to enact this structural reform, the European institutions and Member States have also worked hard as firefighters to address new and recurrent challenges. In particular, the EU stood strong and united in defending its external borders against the instrumentalisation of people by the Belarusian and Russian regimes. It did so while taking a principled and humane approach to those fleeing Russia's war against Ukraine, as well as regarding the large number of evacuations of Afghan nationals to Member States and sustained resettlement efforts. The EU has shown the agility needed to confront and navigate complex challenges. One of the major innovations in the last years has been to shift focus towards a whole-of-route approach, with a series of Action Plans with tailored measures to address the specific challenges on each migratory route. At the external borders of our Union, we have also put in place the world's most technologically advanced border management system. We have taken robust action to limit the space in which ruthless smugglers operate, and we have started to build a European culture of returns.

Of course, we still have work to do. The proposals on the Long-Term Residence Directive, the Return Directive, on smuggling, and attracting skills and talent are not yet concluded, and this will need to be a priority for the next political cycle.

Our paradigm shift on the external dimension of migration also needs to mature further. Migration journeys always have a beginning and an end, and countries worldwide face many of the same challenges we face. Any European migration policy must be fully embedded in our foreign policy.

The EU has come a long way in moving to a more pragmatic and assertive way of ensuring our interests are reflected in the partnerships we maintain worldwide. Yet, despite some substantial successes, we are not yet using all of our leverage to best effect. In the months and years to come, we must lead a clear drive to establish deeper partnerships with key third countries that will situate cooperation on migration alongside other major interests – further mobilising tools such as trade policy, development cooperation, and visa policy.

Crucially, this must include renewed efforts to promote legal pathways, not least as a means of reducing irregular migration and incentivising partners to cooperate on return and readmission. Developing this will be a key area of work in the coming years, alongside integration measures to ensure migrants can bring their full potential to the labour market.

A European success story

Migration remains one of the most challenging issues and continues to dominate political agendas and newspaper headlines alike. With elections around the corner, I also do not see that changing any time soon.

But there is one crucial difference now: we have crossed the Rubicon and solidified a dynamic and common EU approach to migration that many prophesied as impossible.

After decades of patchwork solutions to successive migration crises, the historic agreement on the Pact is a proud testament to Europe's ability to deliver on the issues that matter most to EU citizens.

We have turned Europe's Achilles heel into a success story. The EU today is better equipped and prepared than ever to deal with the day-to-day management of migration and face exceptional and unexpected challenges.

This is the Europe of solutions in action.

ABOUT THE AUTHOR

Margaritis SCHINAS is Vice-President of the European Commission for Promoting our European Way of Life



04. NEW STRUCTURES AND STRATEGIES FOR UNRESOLVED CHALLENGES

FAIRER, BETTER, FASTER, STRONGER: INTRODUCING A NEW EU MODEL FOR ASYLUM AND MIGRATION

Nicole de MOOR
Belgian State Secretary for Asylum and Migration

The EU Pact on Asylum and Migration will be adopted under the 2024 Belgian Presidency of the Council of the European Union. Many words have been used to describe this accomplishment. It has been called historic, world-changing, and ground-breaking. After years of debate on migration issues, the Union finally agreed on a joint approach and a legal framework. EU Member States have decided to join forces, show solidarity, and work closely together for the benefit of asylum seekers, refugees, migrants, and EU citizens.

A new European model

The Pact launches a European asylum and migration model. Two elements are important in this regard. First, the migration model is European in that it introduces European responsibilities, solutions, and solidarity. The new rules have been put in place for European states, regardless of topography, location, and (legal) position. Indeed, not only does the model cover the Schengen area composed of States that have long abolished their internal border controls, but it also deals with non-Schengen EU Member States and Member States with opt-outs in matters of justice and home affairs. Despite the legal-technical challenges regarding variable geometry, the Pact harmonizes European migration rules and makes the Common European Asylum System more common.

Second, the reform creates a new system. Upon closer inspection, we see that the Pact consists of legal and non-legal instruments dealing with a particular piece of the asylum and migration chain. All these elements are connected and must be aligned while recognizing the inherent complexities of the policy domain, national prerogatives, and the rights and duties of individuals and states. Together, the new set of rules represents a comprehensive model that regulates the migration cycle from the migrant's departure to a right of residence or a return and all associated procedures.

Innovations

The new European asylum and migration model is fairer, better, faster, and stronger than the current legal framework. To bring more fairness in the common asylum system, the Pact needed to address the responsibility versus solidarity conundrum. Finding a balance between those two concepts has long dominated discussions at the European level. Frontline Member States are confronted with the vast majority of spontaneous arrivals, creating a disproportionate burden on their national systems. At the same time, shortcomings in the rules on responsibility for asylum applications and deficient national integration systems trigger secondary movements and multiplication of procedures and reception claims in different Member States. This additional burden, combined with a defective Dublin system, causes so-called destination States to hold back on solidarity promises. Yet, during the Pact's negotiations, it was soon realized that the only way to get out of this downward spiral was for the frontline States to take on even more responsibilities, which, in turn, needed to be matched with a more substantial solidarity in terms of the processing and reception of asylum seekers. Bearing in mind the 2015 refugee relocation scheme trauma, this is easier said than done.

The Pact deals with this trauma smartly by promoting a more comprehensive approach to managing migration and asylum. It presents a fairer, more equitable distribution of responsibilities and guaranteed solidarity among EU Member States. For the first time in European migration policy, the Regulation on Asylum and Migration Management (AMMR) introduces a system of compulsory solidarity. Member States with high asylum pressure, through primary or secondary movements, will be supported by fellow Member States, the Commission, and EU Agencies such as Frontex and the EU Asylum Agency, whose mandate was also upgraded under the Pact. Member States can opt to support one another both via relocation of asylum seekers and via financial contributions. The new Crisis Regulation, dealing with situations of mass influx and instrumentalisation, provides for yet more solidarity in times of increased migration pressure. This guaranteed solidarity and the explicit recognition by all Member States of specific difficulties frontline States face is an incentive for them to correctly apply new and additional responsibilities in the form of mandatory screening of arriving asylum seekers, the application of procedures, and the provision of shelter. In

turn, other States will be more inclined to provide support, knowing that duly screened, registered, and processed asylum seekers will be relocated in an orderly following a yearly pledging exercise. By acknowledging the diversity of Member States and proposing differentiated approaches based on their capabilities, the Pact embraces the need for flexibility while promoting understanding and cooperation among Member States.

The Pact's negotiators also committed to better protecting the human rights of those on the move, with particular attention to vulnerable people, as well as providing better opportunities for those wanting to migrate to the Union. The Pact emphasizes the need to create legal pathways for migration, including talent and labour migration. This is believed to reduce reliance on irregular routes but also to be a sheer necessity in light of Europe's aging workforce. Under the Pact, the Single Permit and Blue Card systems were upgraded.

Moreover, the European reform is a victory for legally protecting persons fleeing persecution. By agreeing on the Pact, all EU actors involved – the Commission, the European Parliament, and the Member States acting in the Council – have recommitted to the human right to ask for asylum on European territory, as enshrined in the European Charter of Fundamental Rights and the UN Refugee Convention, while also strengthening the procedural rights of those seeking protection. The Asylum Procedure Regulation (APR) foresees that applicants will be provided with free legal counselling during the asylum application process and the appeal procedure. The APR also provides for dual monitoring of the border procedure: each member state has to establish a national fundamental rights mechanism within the border procedure, and the EUAA monitoring mechanism on reception conditions is reinforced.

Thirdly, and more concretely, the procedural position of individuals is improved by making procedures faster. The UN refugee agency and the European Court of Human Rights have repeatedly stated that asylum procedures should be as quick and efficient as possible. A slow judicial process leads to uncertainty, which is not in the interest of asylum seekers. One of the Pact's novelties is the swift border procedure it introduces for asylum seekers with a low chance of recognition. This procedure is designed specifically for individuals arriving from countries of origin

without war or conflict. They will have their cases assessed in 12 weeks, the result of which can be either a recognition or a swift return. Permanent reception capacity is provided for those who go through this fast-track border procedure by the Member States with support in the form of (human) resources and expertise from the Commission and the EU Agencies. Likewise, asylum procedures for other applicants are also streamlined in the APR to allow for the more efficient processing of asylum applications in general, reduce the backlog of cases, and ensure timely responses to the needs of asylum seekers. We see the same need for speed and simplification in the AMMR. This Regulation improves the current Dublin rules by shortening time limits and replacing the current complex take-back system with a simple take-back notification.

Fourth, and finally, the EU agreed to implement a more robust management of the external borders. In addition to physical and technological means contributing to integrated border management, a legal framework for rigorous screening of irregular arrivals was adopted. The Screening Regulation creates uniform rules to ensure the identification of non-EU nationals upon their arrival and a mandatory security, health, and vulnerability check. Data gathered during the screening will be included in the common Eurodac database, which was upgraded through the Eurodac Regulation. Here, the support of the EU Agency for the Operational Management of Large-Scale IT Systems (eu-LISA) will be detrimental to getting the upgraded Eurodac database up and running.

Conclusion

As has become clear by the above, the EU Pact on Asylum and Migration's transformative nature will innovate the European asylum and migration system. At the same time, it is not a holy grail. Firstly, the Pact focuses mainly on the much-needed reform of the internal dimension of migration. Stronger partnerships on migration, anti-smuggling, readmission, border control, and the promotion of legal migration with third countries should be further pursued in addition to the legislative update. A significant challenge continues to lie in the Union's ability to fight the root causes of migration and to take measures against human smugglers and traffickers to break their business model and end their impunity. However, the Pact and the continued work on the external dimension are not in opposition but are two sides of the same coin.

Secondly, the Pact was proposed to address the challenges faced by EU Member States in managing migration and asylum. The effectiveness, however, will depend on the willingness of Member States to cooperate, overcome differences, and implement the agreed-upon measures. The Institutions – the Council, Commission, and the European Parliament – adopted the Pact together, which required hard work and, above all, trust. In the implementation phase, trust between these key players and the European Agencies will also be needed. Together, their task is to live up to their promise that this historic reform is not only agreed upon on paper but will also fundamentally change how the Union and the Member States deal with migration and asylum on the ground, at the borders, and within our territories. The leading role of Belgium, especially during its presidency of the Council in 2024, in finalizing the Pact and implementing a fairer, better, faster, and more robust migration policy is no minor accomplishment.

ABOUT THE AUTHOR

Nicole de MOOR is Secretary of State for Asylum and Migration in Belgium



THE NEW PACT ON MIGRATION AND ASYLUM: NO HARMONIZATION WITHOUT CONVERGENT IMPLEMENTATION

Nina GREGORI
Executive Director, European Union Agency for
Asylum (EUAA)

At the end of 2023, EU co-legislators reached a political agreement to update the Common European Asylum System (CEAS)—an achievement that had eluded them for years. The system was not designed for the current scale of applications or the challenges it faces today. Although the CEAS endured the 2015-2016 refugee crisis, COVID-19, the fall of Kabul, instrumentalisation by Belarus, and the Russian war of aggression against Ukraine, the agreed modernization is highly anticipated.

After years of negotiations, the expectations for what the New Pact on Migration and Asylum will bring are high. This article will set out some essential factors for making the implementation of the Pact a success and how the European Union Agency for Asylum (EUAA) can contribute to that objective.

About the EUAA

As a decentralized EU agency, the EUAA is mandated to support Member States with implementing the CEAS and thus contribute to a harmonized European approach to international protection¹. The Agency provides both operational and permanent support to national asylum and reception authorities in terms of resources, training, tools, expertise, and guidance to build more resilient systems, based on common standards.

With around 600 statutory staff, over 1,400 contracted experts, and a 2024 budget of about EUR 180 million, the EUAA currently provides operational support on the ground to twelve Member States in almost 160 locations. Furthermore, the Agency trains thousands of member state experts each year and promotes practical cooperation among Member States² on asylum matters through a plethora of products and activities, e.g., through its thematic networks.

High expectations, high stakes

The EUAA looks forward to adopting the New Pact on Migration and Asylum. As an essential reinforcement of the CEAS, it addresses several current shortcomings and provides the opportunity to construct a more robust core of a comprehensive and future-proof EU migration policy framework.

1 OJ, 'Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010', Article 1

2 On 9 February 2024, this concerned Austria, Belgium, Bulgaria, Cyprus, Greece, Italy, Lithuania, Malta, the Netherlands, Romania, Slovenia and Spain

The convergence of asylum decision practices in the EU has been a goal for many years, yet significant variations between Member States continue to exist³. The Pact must tackle this issue to boost fast, efficient, and credible asylum procedures. The Asylum Procedure Regulation and the Qualification Regulation, in particular, are expected to foster greater alignment of asylum practices within the EU. This should minimize the risk of abuse or misuse while ensuring that those who need international protection receive it in a timely manner.

The current ruleset also lacks binding measures for solidarity and equitable burden-sharing between Member States, emphasizing the responsibility of Member States of first arrival for processing asylum applications⁴, with some of those Member States not respecting that obligation. The Asylum and Migration Management Regulation will make solidarity among Member States in situations of migratory pressure mandatory, awarding them some flexibility in choosing the modality of their support. The Regulation will also more effectively regulate the coordination of responsibility for the examination of asylum applications between Member States, bringing more balance between responsibility and solidarity within the joint system.

The Pact furthermore envisages expanding the current framework, adding elements to improve its functioning. The Screening Regulation will introduce common rules for the identification of third-country nationals crossing external borders unauthorized. The Crisis and Force Majeure Regulation finally establishes the 'escape valve' that the system needs, regulating relief in applying the CEAS in times of severe need. Finally, the Eurodac Regulation brings the supporting database to a new level for operational and analytical purposes.

Implementation as the key to success

Much of the success of the Pact depends on its actual implementation - which will be a challenge. One of the main objectives of the reform is to achieve a greater degree of legal harmonization. This is partly guaranteed by using regulations, which apply automatically and uniformly to all Member States without needing to be transposed into national law. Regulations still allow for a certain degree of flexibility and customization, which is necessary to ensure they can be applied in Member States with different practices, institutions, and traditions. However, this can also become a source of further divergence - especially if joint guidance is lacking.⁵

This is why legal harmonization on its own cannot guarantee the effectiveness of the reform: it is essential to focus on how these new rules will be implemented in practice, ideally in a similar way by all Member States. They have two years to implement a vastly revised system while dealing with a heavy existing caseload. Additionally, the number of new applications remains high, and the pressure from the unjustified Russian war of aggression against Ukraine on diverse capacities will remain. Meanwhile, the geopolitical situation is far from stable, risking more migratory pressure in the years leading up to the entry into the application of the new framework.

Therefore, Member States should maintain their commitment to reform and align their structures and processes. And they will need to allocate the necessary human and financial resources, including mobilizing relevant EU funding. Member States will be able to count on the EUAA's support, both in the preparatory and implementation phases of the Pact.

The Agency's support towards preparing Member States will most notably consist of providing dedicated training modules and practical guidance. Existing modules will be adapted, and new ones will be developed to meet the anticipated needs of Member States. Similarly, the Agency will review and update all its practical tools and guidance widely used in EU asylum practices. Recognizing the two-year implementation phase following the adoption of the new instruments, the Agency will prioritize certain developments to support Member States effectively. The activities of the EUAA's thematic networks will be crucial in this context, as they facilitate collaboration among practitioners from across the EU, fostering discussions on common challenges and promoting cooperation and synergies. Additionally, the EUAA's operational support will remain available to Member States at their request.

Adoption of sound implementation plans at the EU and national levels will be crucial. These plans will identify existing gaps and needs and ensure they can be addressed through national and European coordination and adequate planning. The EUAA is ready to support Member States at every step of their preparations by offering assistance with the drafting and execution of their implementation plans.

The effective functioning of large-scale IT systems for migration and home affairs will be instrumental in the functioning of the renewed CEAS. Much of the functioning of the new system hinges on a significant update of Eurodac, which will be turning it into an EU migration case management system of sorts. In addition, Eurodac would become

3 Council of the EU, EUAA note on convergence of asylum decision practices, 9 February 2022, <https://data.consilium.europa.eu/doc/document/ST-6095-2022-INIT/en/pdf> accessed 09.02.2024

4 European Parliament resolution of 12 April 2016 on the Situation in the Mediterranean and need for a holistic EU approach to migration (2015/2095(INI))

5 Martin Wagner, Paul Baumgartner, and Minos Mouzourakis, Harmonising asylum systems in Europe – a means or an end per se?, CEASEVAL Working Paper, April 2019,

interoperable with other existing and new systems, such as the Schengen Information System, the Visa Information System, and the Entry/Exit System, which will, in turn, ensure that the full benefits of the enhanced CEAS can be obtained— in areas such as internal security, preparedness, and evidence-based policymaking. Substantial investments continue to be required in this regard, both in equipment and training.

Conclusion

The reformed CEAS is highly anticipated, yet its impact will hinge on its practical and joint implementation. With the support of the European Commission and the EUAA, Member States have two years to prepare their procedures. Steadfast political will, the allocation of sufficient resources, and strong EU support are all vital to making this implementation successful. The following two years will be decisive to determine the effectiveness of the CEAS reform. Member States can count on the EUAA to provide dedicated, comprehensive, and timely support, now and in the future. Finally, as we launch this new system, we also monitor the future, anticipating what lies beyond the horizon. A modernized framework for regulating migration in the internal dimension is only complete with sound and innovative policy responses addressing challenges and opportunities in the external dimension. The discourse on externalization will undoubtedly persist, together with other potential discussions, perhaps on the mutual recognition of asylum decisions and free movement or on further Europeanisation of the asylum procedures. Migration is an ever-changing domain: while the Pact is a step in the right direction, it will probably evolve further in the future.

ABOUT THE AUTHOR

Nina GREGORI is the Executive Director of the European Union Agency for Asylum (EUAA)



AFTER THE PACT: CAN EUROPE NOW BUILD A CREDIBLE MIGRATION POLICY?

Hugo BRADY

International Centre for Migration Policy Development

Most analyses of the EU's new migration and asylum pact seek to assess whether its reforms will be effective, considering the challenges ahead and querying areas where the envisaged policy changes may hardly suffice or already lag behind emerging realities. This article tries to look beyond that important debate to consider the bigger global picture in which European asylum reform takes place, reflecting how EU leaders might take a strategic approach to safeguard Schengen and build up a credible migration policy over the longer term.

The global context of EU asylum reform

The timing of the EU's latest border and asylum reforms, which eked out after a decade of failure, is not random or taking place in a geopolitical vacuum. Internal politics aside, European democracies are compelled to act on immigration as the world around them becomes wracked by centrifugal global forces. On the one hand, the EU is steeling itself finally decisively to end the Mediterranean boat crisis while erecting a reformed and newly high-tech external border. Conversely, the Union's six largest countries are legislating to admit unprecedented numbers of foreign workers before 2030, relaxing qualification criteria and visa requirements in key economic sectors.

Since 2022, an unprecedented legal and otherwise migration has been underway from disadvantaged regions to the rich world. This is due to the release of pent-up pressure after the pandemic, soaring demand for foreign workers, and push factors like conflict, economic collapse, and the emerging phenomenon of climate displacement.⁶ (The last matters to Europe's migration outlook, even if experts disagree on the knock-on implications for mobility and refugee protection.) In May 2023, the Biden administration lifted Title 42, a Covid-era set of border restrictions. Over subsequent months, a record 2.5 million irregular crossings were recorded as Russians, Indians, and Chinese joined the vast numbers of Venezuelans, Colombians, and Haitians attempting to cross the US-Mexico border.

By contrast, the 380,000 irregular arrivals in the EU over the same period represent 0.05 percent of the 700 million regular entries to the Schengen area annually, as people circulate in and out as tourists or come to work or study. (Around 3.7 million non-nationals legally settled in the EU in 2022, mainly for work reasons). At the same time, however, the realization seems to have dawned at the city and regional level that Europe's comparatively generous asylum system is not the appropriate means to fill labour gaps often

⁶ Why migration is in such a mess once more,' The Economist, 9 November 2023.

based on particular skills and profiles; that asylum seekers do represent a net fiscal cost to the welfare state (at least short term); and that local communities may refuse to receive refugees unless first consulted on their arrival and integration prospects.

On the other hand, the EU is in the midst of a 'bruising worldwide battle' for labour as the US, Canada, Australia, and China aggressively fish the global marketplace for construction, tourism, agriculture, and, above all, healthcare workers. With the global population set to peak around 2050 and China already experiencing a demographic reversal, competition for people is set to get more intense with each passing year. Canada alone intends to admit nearly one million new permanent residents by 2025.

Tellingly, as Italy attempted to control the public order situation in the Mediterranean over the summer of 2023, the Italian prime minister simultaneously announced that her country would issue 425,000 work permits to non-EU nationals by next year. The worker shortage seriously impacts Italy's capacity to absorb an unprecedented €200 billion from the EU's post-pandemic recovery plan. Around the same time, Germany, France, and Spain unveiled foreign worker schemes with similarly ambitious targets. Even Greece – where unemployment is 12 percent – quietly initiated a regularisation scheme in December 2023 to usher thousands of Greek-speaking Bangladeshis and others in an irregular situation into the workplace.

Can the European level add value?

One idea that remains taboo for now is the creation of a Schengen job seeker visa, allowing labour migrants under 30 years of age to enter and search for a job for up to a year. This might be modelled on Germany's 'Opportunity Card,' introduced in 2023 to attract workers with basic language proficiency and a degree or two years' vocational training. A more targeted project for the Union could be an EU-wide regime for retaining international graduates, especially those in the sciences, as countries such as the Netherlands have done by offering an 'orientation year' residence permit for highly qualified migrants seeking employment.

More ambitiously still would be to target a large chunk of external EU funding on education, skills, and job training in key sectors, especially healthcare, in developing countries of strategic importance to establish a new generation of 'guest worker' programs. The Commission estimates that 17 Member States have more than 120 bilateral labour migration arrangements with states outside the Union. There are potential benefits to umbrella European agreements with 'labour superpowers' such as India and the Philippines, not least the sharing of labour market intelligence and simplifying the web of rules and regulations foreign workers must navigate. However, the perennial awkward question

is which member state would benefit most from a common approach when EU countries compete as hard with each other as with the US, Canada, or China.

In the short term, the Union may well have enough on its plate just to deliver the next generation of Schengen border management already agreed on paper long ago. As planning begins on the new asylum regime, border authorities will also roll out an automated 'entry-exit' system (EES) towards the end of 2024. The technological upgrade replaces manual passport stamping with a digitalized live record of all travellers entering and leaving the passport-free zone. Just as with Eurodac, the EES will also be interoperable with the Union's common visa database, revealing for the first time how many travellers illegally overstay short-stay Schengen visas, a number certainly eclipsing those arriving spontaneously by sea each year. (The Union's visa application process is set to be fully digital by 2028.)

A few months after the EES comes online, EU countries (except Ireland) will also introduce ETIAS, a pre-authorization system to screen visa-exempt travellers against security databases.⁷ If early teething issues with the US ESTA system, first rolled out in 2008, are a guide, the new European system will probably have to navigate some early problems as airports fill up with stranded travellers unaware of the major switch.

Time for an EU migration strategy?

Poland is perhaps the one EU Member State that most epitomizes the manifold nature of Europe's current migration challenges. Once a country of mass emigration, it has now been the EU's largest issuer of foreign worker residency permits for several years, with a robust domestic economy and perhaps Europe's lowest fertility rate. It shelters hundreds of thousands of Ukrainian war refugees (in addition to a pre-war Ukrainian diaspora of 1.4 million), worries about the weaponisation of irregular migration flows from Belarus and Russia, and believes Europe's common asylum system to be too open to abuse. Yet Poland has also loosened worker visa requirements for 18 countries, including most of the Middle East, in a bid to secure an additional 400,000 workers per year. At the end of 2024, Donald Tusk's new coalition government will finalize a new migration strategy for the 2025-2030 period, paving the way for introducing a new national immigration law.

By coincidence, the Tusk administration takes over the EU's rotating presidency in January 2025. This is when the new Commission starts work in earnest. Concurrently, the EU Council, chaired by Poland, may be in a position to finalize guidelines mapping out the future of the free circulation area (in EU jargon, 'the area of freedom, security and justice'), a process begun with the Tampere program in 1999.⁸

⁷ ETIAS stands for European Travel Information and Authorisation System.

⁸ The EU treaties oblige governments to agree guidelines for the Area of Freedom, Security and Justice every five years.

On migration and asylum, questions to be addressed in a putative ‘Warsaw program’ may include developing a legally watertight EU model for preventing spontaneous maritime migration, sketching out special migration partnerships with the Union’s immediate neighbours, taking cognizance of the impact of artificial intelligence and other transformative technologies on border management, empowering Member States to compete for workers globally and handing down political guidance on sensitive issues like extra-territorial processing, regularisations and the integration of minorities.

Reflecting the EU’s maturing role and anticipating a renewed strategic mandate, the incoming Commission President might consider presenting a senior nominee as ‘European Interior Commissioner’ for approval by a new European Parliament next October. In cooperation with the EU’s foreign policy chief, who nominally has oversight of all external relations policies, this person would ideally have powers to coordinate migration-relevant EU dossiers, including the work of ECHO, the EU’s civil protection office for managing crises and natural disasters.

On the pact specifically, the new Commission may propose ‘micro amendments,’ tweaking it to take account of ‘black swan’ events since the entry into force, to simplify its more Byzantine processes, and to address any unforeseen impact of Bulgaria and Romania’s entry to the passport-free zone in 2024. One key question — ducked in the negotiations just concluded — is what powers EU states should have to close their borders and limit access to the asylum system when a rogue actor deliberately tries to engineer a mass entry event. In late 2023, Finland was forced to close its 1,300-kilometre frontier with Russia when — following its entry to NATO — hundreds of irregular migrants began arriving from Africa and the Middle East. Although EU courts overruled a similar response by Lithuania in 2021, the issue will not go away.⁹ In the end, Tusk’s new, liberal government voted against the pact, partly due to the absence of credible provisions for responding to such situations in its crisis regulation.

As the Schengen area marks 30 years of operation in 2025, EU governments can allow themselves the briefest moment of congratulation on their stewardship of a free circulation system that does not — and probably could not — exist between 27 sovereign countries anywhere else in the world. But looking ahead to 2030, buffeted by rising nationalism, a polarised immigration debate, and a nasty range of global challenges, significant and far-sighted decisions are now necessary to preserve what European officials of a certain age once called ‘the spirit of Schengen.’

ABOUT THE AUTHOR

Hugo BRADY is Senior strategic advisor at the International Centre for Migration Policy Development, Vienna



⁹ ‘Le droit de l’Union s’oppose à la législation lituanienne en vertu de laquelle, en cas d’afflux massif d’étrangers, un demandeur d’asile peut être placé en rétention au seul motif qu’il se trouve en séjour irrégulier,’ CJEU Press Release, 30 June 2022.

05. THE INTERNAL DIMENSION - FINDING A BALANCE BETWEEN RESPONSIBILITY AND SOLIDARITY

UNPREDICTABILITY LIES AHEAD: THE CHALLENGES OF THE NEW PACT FOR THE EU AND ITALY

Luca BARANA
Istituto Affari Internazionali

The New Pact on Migration and Asylum establishes a new set of rules managing Member States' contradictory interests in migration and constitutes a historic step, as no agreement has been possible since migratory trends became a politicized issue during the so-called refugee crisis. Still, the New Pact will likely fall short of solving the deep-rooted problems affecting the Common European Asylum System, especially regarding derogatory policy solutions and unpredictable outcomes. In particular, the imbalance between solidarity and responsibility remains relevant and will motivate Member States like Italy to invest in relations with third countries. However, such cooperation is not certain, endangering the whole New Pact.

The agreement between the Council and the European Parliament in December 2023 over the New Pact on Migration and Asylum has closed a year of intense but successful negotiations, at least on the surface. The deal on a new set of rules managing Member States' contradictory interests and needs on migration constitutes a historic step per se, as no agreement had been possible since migratory trends became such a politicized issue during the so-called refugee crisis. Still, the New Pact will likely fall short of solving the deep-rooted problems affecting the Common European Asylum System.

The New Pact has the undisputed merit of finally introducing a more reliable and predictable set of rules to manage different aspects of migration and asylum in Europe: from the sharing of data through EURODAC to common principles on screening procedures, from the introduction of policy responses to crises situations to (supposedly) new mechanisms for solidarity and burden-sharing. However, it still reinforces several key principles of the previous dysfunctional framework rather than promoting a more balanced system between solidarity and responsibility.

A failed promise to normalize migration

In its current configuration, the New Pact appears also to contradict the initial commitment made by the European Commission when it first launched it in September 2020 “to normalize migration in the long term.”¹⁰ The idea behind a comprehensive deal putting together different components of migration and asylum policies sounded promising: a grand bargain would finally de-escalate long-lasting divisions among Member States, encouraging a compromise.

However, the politicized nature of migration has stricken back with a vengeance, and the final result is a framework that, in its most sensitive components, is mainly based on derogatory solutions and emergency-driven responses. This applies to the introduction of border procedures for certain categories of asylum-seekers, in derogation to the ordinary functioning of asylum procedures, which is considered too slow. But it is even more evident when analysing the new Crisis Regulation, which delineates not one but three derogatory procedures for crises, causes of force majeure, and attempts of instrumentalisation carried out by third countries. While this convoluted system based on derogatory solutions has proved necessary to make the deal more palatable to Member States, it will make the new rules less predictable, undermining the point of having the New Pact in place.

New responsibilities for Italy

Against this background, one could wonder why a country of first arrival on the Mediterranean Sea as Italy has accepted an unbalanced deal, especially with a ruling coalition that has made a tougher stance on migration – both in European negotiations and in stemming migratory flows through the Mediterranean – one of its main electoral cards. Giorgia Meloni's government has greeted the agreement between the Council and the Parliament as a victory for Italy, as the negotiating mandate agreed among the Member States has largely prevailed over the Parliament's requests. Over the previous months, Italy had expressed satisfaction during the negotiations on more than one occasion, as finally, the EU acknowledged that migration “is a European challenge that

¹⁰ European Commission (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM(2020) 609 final, p. 1.

requires a European response.¹¹ However, the New Pact does not meet the established Italian request for a mandatory relocation scheme for asylum-seekers. In fact, it seems more inclined to reassure other countries, such as France or the Netherlands, on strengthened checks and obligations on secondary movements. The Italian government has also recognized that any hypothesis for a mandatory mechanism is politically unfeasible.

However, giving up on mandatory relocations for strategic reasons has not produced a promising outcome for Italy, as responsibilities for countries of first arrival will still grow under the New Pact without a balanced compensation in terms of solidarity, which is still marred by elements of flexibility and unpredictability. Two examples of new responsibilities for Italy stand out. First, the mandatory extension of border procedures will affect – by definition – countries like Italy that sit at the European external frontier. Setting a minimum threshold of 30.000 procedures per year introduces a welcome element of stability into the system. Still, no impact assessment has been carried out about the repercussions on the asylum systems of frontline Member States, already clogged by bottlenecks and bureaucratic hurdles, and on the implications regarding human rights and access to asylum. The design of measures to support asylum systems in Italy and other Mediterranean states will thus be crucial to building an effective and humane framework.

A second example of extended responsibilities relates to the de facto confirmation of the Dublin system, particularly the principle that mainly charges countries of first arrival with the responsibility for processing asylum requests. To reassure other Member States against secondary movements, the New Pact will extend obligations for countries like Italy from twelve to twenty-four months. It is hardly an outcome that Italy would have appreciated only one year ago.

Unbalanced solidarity will push Italy to look even more outside the EU

Comparable compulsory elements of solidarity do not balance these developments. The New Pact managed to push through the principle of “mandatory solidarity” only by incorporating significant aspects of flexibility. Member States will be allowed to choose between different forms of support for frontline countries, from voluntary relocations to financial contributions for actions in the external dimension. Yet, such flexibility risks undermining the functioning of the new policy framework by inserting an element of unpredictability that could weaken the trust put in the system by countries like Italy. As the primary goal of the New Pact is to introduce a reliable set of rules, the difficulty stemming from this unbalance constitutes the key challenge for its implementation.

Italy has accepted this architecture because of the renewed investment in the external dimension of migration policies

predicated by the EU. Reducing the number of irregular arrivals at the EU external frontiers and increasing returns to countries of origin and transit by deepening cooperation with third countries remain the key goals of these actions and the Meloni government’s primary objective. While Italy has hailed this course of action as a significant change in EU policies, the EU has been constantly investing in these kinds of interventions – with lukewarm results – at least since 2015-16, with the launch of the EU Emergency for Africa Trust Fund and the EU-Turkey Statement. Not coincidentally, a key concession to Italy to convince it to green-light the compromise reached by the Justice and Home Affairs Council on responsibility and solidarity in June 2023 implies more flexibility for national law on returns by granting Member States to autonomously determine criteria to define “safe countries” outside Europe.

In this way, the whole structure of the New Pact has been based on a successful returns policy. However, the cooperation of third countries on returns is independent of the internal rules set by the New Pact. Deeper partnerships with countries in Asia and Africa would instead benefit from a structural approach to migration that is still missing in the New Pact, which promises to reduce irregular flows just by tweaking European rules. It is highly likely that more is needed, as migratory drivers are multidimensional and will hardly be influenced by a merely restrictive approach to asylum in Europe as a means of deterrence.

The unpredictable Pact

This brings forward the main risk embedded in the New Pact, especially for a country like Italy: the gap between expectations and results, which may lead to non-compliance. To nuance political tensions over migration, EU institutions and leaders – including Meloni – have rushed an agreement before the beginning of the electoral campaign for the 2024 elections, promising that the New Pact will reduce the impact of migration on Europe. This rhetoric reinforces the securitized approach to migration and asylum that has made these issues intractable in the first place. Moreover, the unbalanced structure of the New Pact and its reliance on the (unpredictable) cooperation of third countries may fuel untrust in the most affected Member States and the European public at large, when results will likely struggle to emerge.

To counterbalance this risk, the EU should introduce targeted support to Member States when implementing new responsibilities, such as border procedures, while strengthening the predictability of solidarity measures to reassure countries like Italy. At the same time, the EU and its Member States should recalibrate their engagement with third countries to weaken Europe’s dependence upon them regarding irregular arrivals and returns and pursue more structural partnerships. European policymakers should also present the expected results of the New Pact realistically,

¹¹ European Council (2023), Special meeting of the European Council (9 February 2023) – Conclusions, p. 8.

refraining from promising unattainable outcomes such as a sudden reduction in migratory numbers. The New Pact is not perfect: if its unpredictability is not softened, it will also be ineffective.

ABOUT THE AUTHOR

Luca BARANA is Research Fellow at Istituto Affari Internazionali, Rome



THE INTERNAL DIMENSION IN THE NEW PACT: A GLASS HALF-FULL

Dr. Angeliki DIMITRIADI
Hellenic Foundation for European & Foreign Policy
(ELIAMEP)

The New Pact on Migration and Asylum marks a political breakthrough after years of stalled negotiations on reforming the Common European Asylum System (CEAS). The Pact attempts to strike a compromise between Member States' differing needs, emphasizing responsibility-sharing and mandating solidarity while fundamentally maintaining core elements of the current system. Front-line states will continue to maintain disproportionate responsibility but, in cases of increased arrivals, will receive some form of solidarity and the possibility to derogate from the rules in exceptional cases. The complexity of the Pact raises challenges in implementation and monitoring as well as concerns over compliance and diverse practices by Member States.

In December 2023, the European Parliament and Council reached a political agreement on the New Pact on Migration and Asylum. The Member States have been trying to reform the Common European Asylum System (CEAS) since 2015 with no success until recently. The Pact is a breakthrough in what were years of stalled negotiations. This is a significant

political success ahead of the upcoming EU Parliament elections. The Pact is neither ideal nor entirely balanced, but it does try to achieve a compromise between the needs of the different Member States. The political agreement concerns five regulations that seek to establish uniform rules and procedures once more. The reform preserves key aspects of the previous system while mainstreaming into the EU legislation practices and policies already implemented in front-line Member States such as Greece. Emphasis is placed on balancing responsibility with solidarity. This is only partially achieved, and particularly in front-line states, the responsibility for processing new arrivals is not only maintained but strengthened.

Whose responsibility and what solidarity?

Responsibility begins with the screening and identification procedures and is also consolidated in the asylum procedure. The Screening Regulation allows for fast processing, screening for health and vulnerability, and determining the procedure the individual should undergo (asylum or return) within three to five days, with another five days added in case of crises. It further introduces the fiction of 'non-entry' (applied previously by Italy in its airport transit zones).

Aside from the impracticality of the deadlines, the impact on the rights of migrants, and the establishment of liminal legal spaces in member state territory that will result in detention, the Screening Regulation fundamentally requires that front-line states retain the largest share of responsibility to both screen, process and eventually also detain third country nationals in and around their border areas. This replicates the hotspot system¹², which, in Greece, proved to be highly problematic. The logic of the hotspots is also incorporated under the Asylum Procedures Regulation (APR), which expands (and now renders applicable throughout) the use of border procedures. Quick assessment of applications based on (in)admissibility is prioritized, particularly for those with nationalities with 20% or below recognition. Border procedures in the APR can take up to 12 weeks. They will occur in the external borders' transit zones (fiction of non-entry). It is highly problematic that in the initial text, minors and families remain in the border procedure. The APR will very likely result in systematic detention in hotspot-style facilities across the countries at the external borders. The immediate impact will be on migrants and the capacity of reception/detention facilities, as has already been witnessed in Greece. The European Commission has stressed that safeguards are established to avoid overcrowding and that there is a limit to how many will be examined under the border procedure. For the system's proper functioning, significant investment (financial and human) is required to boost reception centres and hotspots. Whether Member States will prioritize this over border controls remains to be seen.

¹² Dimitriadi, A. (2017) Governing irregular migration at the margins of Europe. The case of hotspots on the Greek islands, *Etnografia e ricerca qualitative* 1:75-96

For years, one of the main demands of southern Member States has been to end the Dublin Regulation and establish a redistributive system. Unsurprisingly, the logic of Dublin is maintained in the Pact since the alternative would be to establish a common European asylum space, and there is little political interest in that option. Under the Regulation on Asylum and Migration Management (RAMM), front-line countries maintain the responsibility for the asylum processing of those who cross their territory, i.e., the principle of first entry remains. Nevertheless, one of the positive reforms is that family reunification cases will be prioritized, and additional criteria will be introduced, such as diplomas obtained in a member state, existing meaningful relations, and language knowledge.

The above regulations maintain the responsibility mostly with the front-line countries, or as argued by some civil society groups, add further responsibility¹³. The innovative element in the reform, is the provisions for solidarity.

Front-line states have asked repeatedly for concrete solidarity commitments. The RAMM provides for mandatory but flexible solidarity. An annual solidarity pool will be available to support the member(s) in need, with EU Member States being able to choose how to meet their obligations. A cap of 30,000 relocations is set as one option alongside alternative measures of solidarity (financing, human resources) that are considered to hold equal weight. The 30,000 cap is better than none but not reflective of current needs. It is also worth remembering that the Voluntary Solidarity Mechanism approved in June 2022 failed to meet the set targets¹⁴. Some Member States procrastinated, others lacked adequate reception facilities, and some wanted specific nationalities. More importantly, out of the 23 countries that supported the initiative, only 13 committed relocation pledges, with the others providing financial and operational support¹⁵. This suggests a limited preference for relocations that remains the main demand of front-line countries and raises questions as to how the European Commission will enforce it.

Frontline states have welcomed the Pact, despite the imbalance between solidarity and responsibility. Greece, particularly, has been a vocal proponent of the agreement, both for the mandatory solidarity mechanism and for the increased role individual capitals will end up playing, with the Minister of Migration and Asylum welcoming “the provision for an annual political debate, at the ministerial level, which will highlight the migration situation and the needs that exist in terms of solidarity.”¹⁶ For Greece, the inclusion of instrumentalisation as a reality and the tools acquired to address it through derogations were both desired and lobbied for, following events in Evros in February 2020.

Though not labelled by the European Commission as such, in reality this functions as another form of solidarity in the Pact, and it is a problematic one since it will allow Member States to derogate from their obligations as a way of addressing situations of ‘crisis,’ ‘instrumentalisation,’ and ‘force majeure.’

The challenge ahead: implementation and monitoring

The instruments included and processes envisaged in the Pact will only come into full effect across the EU in 2026. Some Member States are already implementing key aspects of the new reforms, including the Netherlands, Bulgaria towards the border with Turkey, while others, like Greece, have been implementing several aspects for years already as a result of the EU-Turkey Statement of 2016 and the hotspots on the islands of northern Aegean. How implementation will occur across all the Member States remains to be seen. Delaying is not an option, meaning Member States should start establishing plans for implementation and implement them sooner rather than later to allow room for adjustments and changes where needed.

This is where monitoring becomes crucial, especially given the significant deficiencies in Greece’s implementation of asylum processing, reception conditions, detention, returns, and border management, especially concerning deterrence practices at land and sea borders. How monitoring will occur remains unclear, as existing mechanisms (e.g. the Task Force in Greece) have been insufficient, and member state compliance is not guaranteed. Whether the European Commission adopts a different format, or an independent body is designated despite existing objections by some Member States, this will be a crucial challenge.

The legislative proposals are incredibly complex, bureaucratic, and laden with exceptions. This will render implementation difficult and likely increase divergent practices across the EU. Member States’ primary concern has been to design a system that will cope with a significant increase in arrivals. The Pact offers derogations as an exceptional response, but there is a risk that derogations will become the norm, impacting the human rights of people on the move and the sustainability of the internal dimension.

The spectre of the rise of far-right parties across Europe and concerns over their potential gains in the EU Parliament elections, coupled with growing divergent practices across the EU, made the need for compromise imperative. The reality is that for years, Member States have not been implementing the rules, and reform was essential. In that sense, the Pact is a glass half full for front-line Member States like Greece that continue to maintain a disproportionate burden of responsibility but are now guaranteed some form

13 ECRE. (2023). Editorial: So that’s it Then? Agreement(s) on the EU Asylum Reform.

14 Statewatch. (2022). Voluntary Solidarity Platform’ for relocating refugees failing to meet targets.

15 Euronews. (2023). Only 435 asylum-seekers have been relocated across the EU since June under a new voluntary scheme.

16 AMNA. (2023). Migration minister Kairidis welcomes EU’s New Pact on Migration & Asylum.

of solidarity. How it will translate into practice and whether it will suffice remains to be seen.

ABOUT THE AUTHOR

Dr. Angeliki DIMITRIADI is Head of the Migration Programme at ELIAMEP, Hellenic Foundation for European & Foreign Policy, Athens



SOLIDARITY AND RESPONSIBILITY: GERMANY'S ROLE IN THE EU'S MIGRATION DILEMMA

Dr. Raphael BOSSONG
German Institute for International and Security Affairs (SWP)

This contribution critically examines Germany's role in the EU Pact on Migration and Asylum, focusing on its inconsistent attempts to navigate between solidarity and responsibility. Germany received a disproportionate share of refugees and failed to negotiate effectively for a meaningful redistribution of asylum seekers due to its overriding interest in an open Schengen zone. Instead, Germany has come to accept the minimalist consensus in the EU to reduce arrivals and to restrict asylum processes. Nonetheless, there is a cautiously optimistic outlook whereby Member States may improve their administrative coordination, learn from experience, and gradually shift their perspective to economic needs for migration.

The Pact does not end discussions over solidarity

Academic and professional experts have roundly criticized the anticipated solidarity system of the Pact, specifically as defined in the Asylum Management Regulation, as overly complex (or even “byzantine”) and insufficient.¹⁷ EU Member States only agreed on a minimum number

of 30,000 protection-seekers that should be relocated annually, whereas all other dimensions and the overall scale of “flexible solidarity measures” have been left open to yearly negotiation processes in technical committees. Based on the legal text alone, it is hardly possible to assess the likely impact of various types of solidarity contributions (in kind, financial, or relocation), the practicability of the secretive planning and pledging process for the “solidarity pool” between the Commission and Member States, and the impact of various subsequent adjustment mechanisms for requesting or refusing solidarity measures. To illustrate, for any member state, one needs to account for potential declarations of crisis and different levels of “systemic pressure,” calculated based on recent arrivals and the number of protection-seekers already present.

However, the following contribution mainly reviews Germany's position and leverage to balance solidarity and responsibility (Art.80 TFEU) in managing the Common European Asylum System (CEAS). Since 2016, intense disputes over the meaning of solidarity have blocked reform efforts of the Dublin system and the overall CEAS. In Germany, solidarity has also been a highly sensitive issue, marked by a significant gap between official rhetoric and political bargaining. While many German decision-makers traditionally stressed the need to show solidarity with Southern European Member States and the need for a “European solution,” this only partially matched national interests in reforming the CEAS since 2016. Over the last year, mainstream and governing parties in Germany have expressed more open criticisms and disappointment with the EU when it comes to dealing with persistently high numbers of asylum-seekers and irregular migration.

Germany as the primary recipient of migrants and asylum-seekers in Europe

It is now common knowledge that the coming Pact is unlikely to relieve the pressures on German communities regarding the housing and integration of a large number of refugees. Even if it was swiftly implemented into national legislation and administrative structures by 2026, it is unrealistic to expect other Member States to readily accept that Germany itself could qualify for relocations and other forms of solidarity. Arguably, the unspoken assumption holds that irrespective of the very high number of asylum-seekers and recipients of temporary protection in Germany, it could not call on the EU solidarity pool. This also partly explains why, in national political discussions, senior opposition or regional leaders discount the recent “breakthrough” at the EU level and openly call for a “paradigmatic shift” in dealing with asylum-seekers. In light of the recent endeavour by Great Britain to strike a new arrangement to transfer refugees and irregular migrants to Rwanda and related plans by Italy to create processing centres in Albania, various German politicians

17 Policy-Parper-Reforming-EU-Asylum-Law-the-Final-Stage-August-2023.pdf (ecre.org)
Flexible Solidarity in the New Pact on Migration and Asylum: A New Form of Differentiated Integration? (europeanpapers.eu)
EUMigrationPact_DP_v3.pdf (epc.eu)

are also mulling options to turn away from EU law, harden national borders and to outsource asylum cases to third countries.

Yet none of these ideas are realistic and practicable under international law, at least for a state of Germany's size and geographical position. Conversely, fully rejecting the Pact on the grounds that it undercuts the right to asylum and cements the mistreatment of irregular migrants, as many left-leaning commentators do, provides no solution either. Navigating the Pact's challenges is a formidable yet crucial task for German policymakers, making the best of a difficult situation.

The discrepancy between rhetoric and reality concerning European solidarity has been stark, oscillating between declarations of support for "front-line states" like Italy and Greece and grievances over "secondary migration" within the Schengen zone. Germany has, and continues to, shoulder a disproportionate share of asylum-seekers in the EU, not only during crises such as those in 2016 or 2022 but also in the intervening periods.¹⁸ While not the highest per capita recipient of asylum-seekers, Germany ranks among the top in the EU and clearly leads among large Member States, recently taking as many applications as France and Spain combined¹⁹ and consistently receiving more than Italy. So-called secondary migration and subsequent repeated applications within the Schengen Zone, and the mobility of accepted refugees—particularly between Greece and Germany—add to this imbalance. Among other factors, this can be explained by the inadequate reception and integration capacities of various Southern and Eastern European Member States and the allure of Germany's labour market, family ties, and diaspora networks.

Germany's difficult negotiation position

Germany's role as a (semi-)hegemon or anchor to the Schengen system comes with inherent costs. As the largest member state with numerous internal Schengen borders, an export-driven economy, and a nexus for significant production and value creation chains within the Single Market, Germany benefits substantially from the openness of the European space. Its economic prosperity relies heavily on immigration, including from within the Schengen zone. A withdrawal into isolation would have severe, if not catastrophic, consequences, as vividly demonstrated by the restrictions during the Corona pandemic. The situation in 2016, where Greece nearly faced suspension from Schengen due to a coalition of dissatisfied states, contrasts with Germany's recent unilateral moves to expand internal border controls, motivated by domestic challenges and a desire to influence Pact negotiations. For better or worse,

this has had a fairly limited political impact. All Schengen Member States have become accustomed to selective internal border controls, whether legally sanctioned or not.

Ultimately, for Germany, the overarching need for EU cohesion reliably trumps concerns about inadequate external border controls and the prevalence of secondary migration within the Schengen zone. Germany simply does not have credible options to enforce widespread border closures or take other unilateral actions against other EU Member States. Unlike during the Eurocrisis, when Germany's position was heavily scrutinized but somewhat effective, the country lacks a similarly authoritative stance to compel other Member States in matters of migration. At least on paper, Germany would benefit disproportionately from the existing Dublin rules. Some EU Member States tacitly deem it fair that there is a significant gap between EU law and actual practices. Consequently, Germany found itself increasingly at the receiving end of hard bargaining strategies.

The implicit compromise of the Pact

This helps to understand the negotiations on the Pact and its future implementation. Despite years of negotiations, Frontline states see limited benefits in the proposed solidarity mechanisms, recognizing that these efforts cannot compensate for the number of people that voluntarily move on toward North-Western EU Member States. Nor is it likely that more stringent border controls and asylum border procedures will lead to a strong deterrence and substantial reduction in irregular migration. Consequently, Germany could not effectively advocate for a transition from ad hoc burden-sharing to a truly binding redistribution system in exchange for full control over secondary migration. Behind closed doors, the consensus among EU states suggests that even with political will, asylum-seekers' actions could undermine such efforts. The recent experience with Ukrainian protection-seekers who either stayed geographically close to home in Eastern European Member States or mostly settled in Germany underlined again that there is only limited voluntary dispersion across the EU.

Recognizing its constrained leverage, Germany, therefore, increasingly aligned with the least ambitious consensus among EU states, focusing on reducing migrant numbers rather than aiming for a more equitable system of reception and burden-sharing. Externalised border controls in third states have been upheld and expanded, no matter what – as is most drastically shown in Libya. After the failure of the first CEAS reform in 2019, the only genuinely novel element of the Pact was the focus on border procedures, which substantially increased responsibilities to Member States

¹⁸ In 2023, for instance, Germany received 24.7% of all first-time asylum applications Annual asylum statistics - Statistics Explained (europa.eu), while it has approximately 18.7% of the EU's population. Subsequent secondary migration and asylum-applications increase German's long-term relative share. For a long-term analysis, see Asylum seekers in Europe: where do people go and why? - Economics Observatory. According to the UNHCR Germany is currently ranks 3rd world-wide for the overall number of hosted refugees (approx.. 2,5 million): unhcr.org/refugee-statistics/

¹⁹ Depending on the year either one of those states usually take second place in the EU in overall application numbers

with an external border. Yet the Council of the European Union simultaneously agreed on a numerical cap on the number of mandatory border procedures per year (30000), which matches the minimum number of relocated asylum-seekers. Moreover, additional shortfalls of relocations vs. responsibility claims on external border states could potentially be channelled into so-called “Dublin offsets.” This means that a front-line member state could officially refuse a share of asylum applicants from other EU Member States that would otherwise be entitled to transfer them back based on the “first country of entry” criterion.

The final compromise of the Pact also includes the revamped crisis regulation – including the so-called instrumentalisation of migration. Germany previously rejected this law for normative reasons and due to concerns that a new set of “derogations” would undercut the aim to create a more uniform and reliable CEAS. Now, in times of crises, Member States may choose to expand the number of border procedures and maximum detention periods of asylum-seekers, but they could equally opt for more extended registration periods, minimal reception conditions, and very restrictive thresholds for border procedures, which could additionally fuel secondary migration. In other words, limited control and onward movements of asylum-seekers will, in all likelihood, remain a structural feature and safety valve for the real-world CEAS, only with a higher degree of official approval or legality than is currently the case.

Conclusions: get technical, learn from experience, and focus on real needs

For Germany, the question is then: is this compromise enough to defuse the mutual recriminations and to relegate inevitable tensions in migration management back to technical levels and administrators - while the European Heads of State and Government can get back to the real business of reforming and enlarging the EU in an agitated geopolitical environment? This political dimension is at least as important as administrative capacities when it comes to the EU’s capacity to manage large-scale mixed migration flows collectively. Much of the current official discourse on the Pact in Brussels sounds excessively self-congratulatory, whereas the reception system in Germany and other countries is under severe strain. It is not likely that all features of the Pact will swiftly and faithfully be implemented across the EU. However, one can still aim for a cautiously optimistic outcome. The need to coordinate solidarity pledges, undertake regular national capacity assessments, design more comparable border procedures, and make joint decisions on the activation of crisis mechanisms could serve as a learning process, charting a path to a leaner, more unified, and coherent system to process asylum-claims in the 2030s. Meanwhile, underlying structural economic and demographic shifts could reconceptualise the debate from the “burden” of asylum-seekers to the need to attract sufficient and sustained immigration.

ABOUT THE AUTHOR

Dr. Raphael BOSSONG is Deputy Research Group Leader (a.i.) at the German Institute for International and Security Affairs (SWP)



THE NEW PACT AND THE DIFFERING POSITIONS OF CENTRAL AND EAST EUROPEAN MEMBER STATES

Vít NOVOTNÝ
Wilfried Martens Centre for European Studies (WMCES)

The 11 Central and East European (CEE) Member States have taken different positions on the ongoing EU asylum reform. Whereas Bulgaria, Croatia, Estonia, Latvia, Lithuania, Romania, and Slovenia support the Pact, Czechia abstained in a crucial vote on some of the key measures in February 2024. Hungary, Poland, and Slovakia voted against most or all of the ten bills. This vote revealed a continuity in the CEE countries’ positions on EU asylum policies. To implement the Pact, these countries will need to take the same steps as the other EU members: increase their asylum and logistical capacity and their capacity to return irregularly staying individuals to their home countries.

Introduction

When the European Commission submitted its asylum reform proposals in September 2020, the 11 Central and East European Member States extended them a cautious welcome, as did the other EU members. However, the vote of the representatives of all EU governments in the Council on 8 February 2024 on ten key asylum and migration laws demonstrated a heterogeneity of views among the CEE countries. The Member States’ positions in the Committee of the Permanent Representatives of the Governments of the Member States (COREPER) have not been made public. It is known that Poland voted against the entire package and that Hungary and Slovakia voted against at least some of the bills. Czechia abstained on the question of burden-sharing. Thus, it appears that the most sceptical voices about the

Pact came from Central and Eastern Europe. In contrast, the remaining seven CEE countries voted in favour of most bills, thus providing crucial votes under the qualified majority that passed the bills to the final vote in the European Parliament.

A brief look backward

When legislation under the first generation of the Common European Asylum System was being adopted between 2000 and 2005, Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia were still in the EU 'waiting room'. When the EU negotiated the second generation of its asylum legislation in the late 2000s and early 2010s, the CEE members were already in the EU (with Croatia joining in 2013). Yet, the issue of international protection remained uncontroversial. Only when the EU's asylum and border crisis began in 2015 was asylum propelled to the top of the political agenda due to the contested Council decision on the temporary mechanism of obligatory relocations of asylum seekers from the EU's frontline states in the South.

The road to agreement

For many years, the countries in the region registered relatively low numbers of irregular arrivals. Things changed rapidly in 2015 when Hungary suddenly received the highest number of first asylum applications per capita compared to all other EU countries. As the West Balkan route became more active in the early 2020s, Croatia, Slovenia, and Bulgaria became prime asylum destinations. During 2022, these three countries ranked fourth, fifth, and sixth for per-capita numbers of first applications in the EU.²⁰ In contrast, practically all remaining CEE states continued ranking the lowest in the EU per-capita tables.²¹ Historically, record-high numbers crossed Slovakia and Czechia in 2022-23, but the arrivals tended not to lodge asylum applications. As of the mid-2010s, Bulgaria, Croatia, and Hungary reported significant irregular migration pressures on their borders. So did Poland, Lithuania, and Latvia following migration blackmail orchestrated by Belarus' dictator Lukashenka as of 2021.

What unites the CEE countries is a relatively low asylum processing capacity. Most regions can also be characterized by scepticism towards EU-level solidarity mechanisms. As a result, more than in the rest of the EU, the question of burden-sharing dominates internal political discussions, with other considerations taking a lower importance. However, the instinct to reject burden-sharing on asylum has been trumped by several different factors.

Where countries registered high numbers of lodged asylum claims per capita, they were inclined to support EU-level compromises on asylum. Views differed among the countries with relatively low numbers of applications. Among these countries, positions depended on a country's geographical position and its concept of statehood. Irregular migration pressure did not appear to be the decisive factor. At the risk of over-generalization, the individual countries' positions can be characterized as follows:

The Baltic States did not consider asylum burden sharing enough of a strategic issue to merit forming a critical position toward the package of the Commission proposals. The aggression exerted against them by their neighbours Russia and Belarus (including significant migration pressure) and internal security issues were bigger worries than asylum reform.

Bulgaria and Romania also voiced general support for the New Pact, although Bulgaria abstained in the vote on setting up the EU's asylum agency in 2021. These two countries faced migration pressure from the southeast and were in direct line of potential Russian military aggression. Bulgaria is currently registering high numbers of asylum claims from people coming via Türkiye.

Croatia and Slovenia faced considerable migration pressure as of 2014-15. In the first years of the 2020s, both countries became prime destinations for asylum seekers. Consequently, the Croatian and Slovenian governments supported the New Pact during the negotiations in the Council.

Czechia and Slovakia played ambiguous roles in the process. More than the others, these two countries' diplomatic positioning tapped into the growing EU-wide rejection of mandatory relocations. In 2016, the Slovak presidency of the Council of the EU created the concept of 'flexible solidarity,' which allows a member state to assist another member under migration pressure through means other than migrant relocation. During its presidency in 2022, Czechia deftly negotiated a version of the same idea, one that found its way to the final New Pact compromise. While warmly praised by fellow EU diplomats, these achievements received a less-than-warm welcome at home, where domestic majorities rejected the entire idea of asylum burden-sharing. In the end, on the issue of burden-sharing the two governments followed the public mood.

Finally, Hungary and Poland were steadfastly opposed to the entire Pact, even though in December 2023, a new pro-European government was sworn in in Poland following eight

20 Eurostat (2023), 'First-time asylum applicants up 64% in 2022', <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230323-2>

21 Cyprus, Austria and Luxembourg took the first three positions in the per-capita count in 2022. Beyond this, the overall migration picture for the CEE countries was highly differentiated. For example, in 2022-23 Czechia, Poland and Estonia provided temporary protection to the highest numbers of Ukrainian war refugees per capita in the EU, whereas Slovenia and Hungary hosted very low numbers in comparison. Also, the degree of openness to labour immigration varied widely among the CEE countries. These factors appeared to have no influence on the individual countries' positions on the New Pact.

years of EU-hostile national populists in power. Hungary insisted, provisions of the EU treaties notwithstanding, that the EU had no business regulating asylum. The Polish government's argument was similar until late 2023, although the new Tusk government, when justifying its opposition to the Pact, replaced its predecessors' verbal animosity towards the 'Brussels bureaucrats' with more nuanced language.

Two groupings

If the 8 February 2024 COREPER vote were taken as an indication of the countries' final intentions about the New Pact, it would reveal a remarkable continuity in their positions vis-à-vis changes in EU asylum norms. The CEE countries that took part in the temporary migrant relocation scheme of 2015-17, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Romania, and Slovenia, also supported the New Pact during the February 2024 vote.²² In contrast, the 'anti-relocation' coalition of Czechia, Hungary, and Poland was recreated in 2024 as a grouping that did not vote in favour of the New Pact. Slovakia was an exception to this pattern. The country did offer relocation places in 2015, but by 2021-22, it had joined the sceptical camp.

The internal unity of each of the two camps should not be exaggerated. At different stages of the New Pact negotiations, the governments of the 11 countries in question adopted legislative postures that were far from identical. The peculiarities of the individual countries' positioning are too numerous to be listed here. Moreover, the sceptical camp of 2024 showed very little of its united stance on EU asylum from the years 2015-19. The Russian aggression against Ukraine, Hungary's ideological obstinacy inside the bloc, and political changes in Czechia and Poland eroded almost all of the previous cohesion. Czechia, Hungary, Poland, and Slovakia only appeared to come close to aligning their positions in the final stage of the legislative process, and even then, each country provided different justifications for refusing to support the reform. Unlike the other three, the Czech government emphasized that it did not vote against the Pact and only objected to the last-minute changes that 'decreased the capability to effectively hinder illegal migration at the external border.'

Implementing the Pact

Rather than a magical solution to the EU's asylum and irregular migration 'problem,' the New Pact should be treated as an opportunity to improve cooperation between the bloc's members, both internally and vis-à-vis countries in Africa and Asia. A legislative agreement could build trust among EU members in countering secondary movements and acting together on repatriations. It could also help collectively tackle the challenge that will remain in place

irrespective of asylum reform: controlling irregular flows outside the EU borders and preventing irregular departures across the Mediterranean and Aegean seas and the Atlantic Ocean.

If the reform legislation is indeed adopted—which is increasingly likely—there are few indications that even those CEE countries that did not favour the Pact would conform to the new legislation to a lesser extent than the remaining EU members. Hungary, with its record of openly flouting the asylum-related judgments of the European Court of Justice, may remain an exception. Nevertheless, there are questions over the New Pact that concern the entire EU. Judging by the Member States' compliance with the existing asylum norms, implementing the new laws will require a mind-set change across the EU-27.

To implement the Pact, the CEE countries must do what the other EU members must: increase their asylum and logistical capacity and their capacity to return irregularly staying individuals to their home countries. This will include hiring and training new staff to conduct screening at the EU external borders and conduct border asylum procedures. It will involve increasing border management capabilities and improving internal communication between government departments. It will also include contingency planning improvements at national and EU levels. None of this will be possible if governments and political parties continue denying the need for EU-wide cooperation and insisting on notions of state sovereignty that predate the Schengen passport-free system.

The Pact will not prevent migration crises at the EU's external borders or inside the Union. If implemented, however, it might improve how the EU generally hinders and responds to irregular migration.

ABOUT THE AUTHOR

Vít NOVOTNÝ²³ is a Senior Researcher at the Wilfried Martens Centre for European Studies, Brussels



22 This despite Romania voting against the September 2015 relocation decision of the Justice and Home Affairs Council along with Czechia, Hungary and Slovakia.

23 I would like to thank Théo Larue for proofreading the text.

06. THE EXTERNAL DIMENSION - COOPERATION WITH THIRD COUNTRIES

SHIFTING HORIZONS: EUROPEAN UNION'S ASYLUM AND MIGRATION PACT ON AFRICA

Dr. Margaret MONYANI
Institute for Security Studies (ISS), Pretoria

This paper examines the European Union's (EU) New Pact on Migration and Asylum through a bifocal perspective, analysing its internal mechanisms within the EU and its consequent effects on Africa. It delves into the EU's sophisticated migration management strategies, which markedly diverge from the less emphasized migration policies of African nations. Aiming to strike a balance between border security and the rights of migrants, the Pact introduces initiatives such as pre-entry screenings and fast-tracked processing. Despite these efforts, the Pact is critiqued for potentially leading to the securitization of migration and neglecting human rights considerations. The success of the Pact depends on its capacity to reconcile the EU's internal goals with the complex migration landscape of Africa, pushing for a humane and all-encompassing approach that serves the interests of both migrants and their host communities. This requires adeptly managing the intricate interplay between internal governance and external collaboration.

Introduction

The interaction between the European Union (EU) and African states is profoundly influenced by the governance of migration, a pivotal concern highlighted by shifting geopolitical dynamics and global challenges, underscoring the need for a solid cooperative framework. In contrast to African nations, which frequently place less emphasis on migration within their policy frameworks, the EU has taken a proactive stance by integrating Middle Eastern and North African (MENA) countries into its migration management strategies. A significant stride in this direction is the 2020 New Pact on Migration, designed to cultivate enhanced

partnerships with countries of origin and transit, improve border control measures, and establish fair rules to encourage solidarity among EU Member States. European Commission's Vice-President Schinas emphasizes that the Pact is built upon three main pillars, with the external dimension being a foundational element, underlining its crucial yet integrated role within a cohesive strategy for managing migration alongside the other two pillars²⁴. This approach is not merely procedural but signifies a strategic shift in response to the dynamic patterns of global migration. This analyses explore the Pact's capacity to build upon, diverge from, or revolutionize the existing frameworks with African nations, assessing its effectiveness in tackling the sophisticated migration issues these countries encounter within the larger EU migration policy context.

The EU's migration policies towards Africa

The EU's migration policies towards Africa have evolved over time, focusing on managing migration flows, particularly aiming to curb irregular migration and enhance cooperation with African nations. Initiatives, such as the Global Agreement on Migration Management introduced in 2005 and the Global Approach on Migration and Mobility in 2012, have sought to create legal migration channels, combat human trafficking, and foster cooperation with third countries²⁵. These efforts were aimed at addressing migration holistically, balancing the needs of sending, transit, and receiving countries along with those of migrants. The establishment of the Common Agreement on Mobility and Migration (CAMM) with countries like Nigeria and Ethiopia and mobility partnerships with nations such as Cape Verde exemplify the EU's strategy to manage migration through agreements focused on returns, readmissions, and the reduction of irregular entries into the EU²⁶. These partnerships have been designed to enhance labour mobility and strengthen the migration-development nexus, including aspects like diaspora relations and remittances.

24 European Commission. (2020, September 23). Towards a more resilient and sovereign Europe. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/speech_20_1736

25 Zanker, F. Managing or restricting movement? Diverging approaches of African and European migration governance. CMS 7, 17 (2019). <https://doi.org/10.1186/s40878-019-0115-9>

26 Hampshire, J. (2016). Speaking with one voice? The European Union's global approach to migration and mobility and the limits of international migration cooperation. *Journal of Ethnic and Migration Studies*, 42(4), 571–586.

However, the effectiveness of these policies has been mixed. The 2015 Valletta summit, which aimed to lay the groundwork for improved cooperation with African nations through migration compacts, faced challenges in implementation, with no successful agreements reached with the prioritized countries²⁷. This has raised questions about the EU's approach and its alignment with the actual dynamics of African migration, which is predominantly intra-continental rather than directed towards Europe. The introduction of the Team Europe Initiatives (TEI) under the Neighbourhood, Development, and International Cooperation Instrument (NDICI) aligns with the 2020 EU Pact on Migration and Asylum, signalling a continued political priority on migration²⁸. These initiatives aim for tailored, balanced partnerships to address migration and its external impacts comprehensively.

Despite these efforts, the EU's migration policies have faced criticism for focusing too narrowly on security and the externalization of border control, leading to the securitization and criminalization of migration. This approach has often overlooked the broader implications for African mobility and has not fully accounted for the complex migration dynamics within the continent. Moreover, challenges in the return and readmission of irregular migrants and engagement with countries with limited democratic institutions highlight the ethical and practical dilemmas facing the EU's migration policies towards Africa.

How will it build upon, diverge from, or revolutionize these existing frameworks?

The New Pact on Migration and Asylum introduced by the European Union represents a significant shift in the EU's approach to managing migration and asylum issues, particularly impacting African and Maghreb countries. This comprehensive framework seeks to address various facets of the migration challenge, from entry procedures to asylum processing and from return policies to legal migration pathways, aiming to balance the need for security with the rights and dignity of migrants.

A critical component of the Pact is the compulsory pre-entry screening for migrants, including identification, health, and security checks, alongside fingerprinting and Eurodac registration²⁹. While this aims to streamline entry processes, concerns arise regarding the potential for rushed procedures that may not afford African migrants' asylum claims the thorough consideration they deserve, potentially leading to wrongful denials or expedited returns. Furthermore, the

emphasis on fast-tracking claims from countries with low recognition rates could lead to a prejudiced approach against applicants from African nations, where political instability or conflict might not be adequately recognized as grounds for asylum. The procedures also raise concerns about the fundamental rights of migrants, including the right to a fair asylum process and protection against refoulement, despite assurances of individual assessments and safeguards. The focus on swift returns for rejected claims could result in increased pressures on African migrants, deterring genuine asylum seekers and undermining their access to necessary protections. Additionally, implementing these procedures may strain the resources and capacities of African nations to reintegrate returned individuals, impacting their social and economic stability.

The proposed Asylum Migration Management Regulation introduces a solidarity mechanism designed to redistribute the asylum application burden among Member States more equitably. This mechanism, set to replace the 2016 proposals and address the Dublin Regulation's deficiencies, introduces relocation and return sponsorship to assist Member States under migratory pressure, focusing on efficiency and shared responsibility³⁰. However, the regulation raises significant questions about its potential effects on intra-EU dynamics and the autonomy of asylum seekers. Specifically, how it will manage secondary movements within the EU and the extent to which it might limit asylum seekers' ability to choose their country of asylum. The emphasis on deterring unauthorized movements raises concerns about the balance between regulatory objectives and the rights of individuals seeking protection, especially those with familial or community connections in certain Member States. These considerations highlight the regulation's ambitious attempt to streamline asylum procedures while ensuring fairness and solidarity, yet underscore the complexities of implementing such a framework without compromising individual rights and freedoms. For instance, when it comes to Africa, there is a proposal to implement the proposed solidarity mechanism by funding the Libyan Coastguard or erecting barriers that significantly affect African migrants. These measures, intended to curb migration, might inadvertently endanger migrants' lives, exposing them to risky detention conditions in Libya or perilous sea journeys. This approach has sparked criticism for prioritizing border control over migrants' rights and safety, underscoring the tension between securing borders and adhering to humanitarian principles.

27 Kihato, C. (2018). The 'Containment Compact': The EU Migration 'Crisis' and African Complicity in Migration Management (Occasional Paper No. 228). Johannesburg: South African Institute of International Affairs.

28 Pleeck, S., & Gavvas, M. (2023, September 27). Team Europe Initiatives: Three Years In. Center For Global Development. <https://www.cgdev.org/blog/team-europe-initiatives-three-years>

29 European Commission. (2020, September 23). Towards a more resilient and sovereign Europe. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/speech_20_1736

30 Human Rights Watch. (2023, December 21). EU's Migration Pact is a disaster for migrants and asylum seekers. Human Rights Watch. <https://www.hrw.org/news/2023/12/21/eus-migration-pact-disaster-migrants-and-asylum-seekers>

Furthermore, the Pact emphasizes an effective and common EU system for returns, aiming to streamline return procedures and close loopholes in the Return Directive³¹. While this may enhance the efficiency of return processes, it also raises human rights concerns, particularly if returns are not conducted in a humane and rights-respecting manner. The Pact's strategy for incentivizing cooperation with third countries for the return and readmission of individuals underscores the complexity of balancing EU migration objectives with the rights and dignity of migrants.

Introducing a 'crisis' preparedness and response system marks a strategic pivot towards enhancing the EU's capability to manage migration and asylum challenges in crisis scenarios. This includes consolidating crisis management tools and outlining essential strategies for preparedness. Through the Migration Preparedness and Crisis Blueprint, the pact aims to consolidate crisis management tools and delineate essential institutional, operational, and financial strategies for preparedness at both EU and national levels³². Additionally, the pact proposes a legislative framework for temporary protection in crisis situations, broadening the possibilities for immediate protection status and possibly expanding compulsory relocation and return sponsorship. However, critical analytical questions arise: how feasible is the rapid deployment of operational support in real-time crises, considering the bureaucratic and logistical challenges of coordinating among multiple EU agencies and Member States? How will the broad criteria for immediate protection status and the definition of "crisis" be consistently applied across Member States to ensure that migrants facing genuine risk are adequately protected?

Lastly, the Pact's focus on legal migration pathways, including "Talent Partnerships"³³ and the exploration of an "EU Talent Pool," aims to address labour market needs and provide safe and legal opportunities for migration³⁴. However, the instrumental view of legal migration, emphasizing the competition for global talent over the developmental needs of origin countries, and the limited scope of proposals for low-skilled migrants raise questions about the Pact's sufficiency in addressing the diverse migration needs of African and Maghreb countries. Despite these challenges, the Pact offers new opportunities for managing migration flows effectively and ensuring migrants' rights and well-being, underscoring the importance of a balanced, humane, and comprehensive approach to migration management.

Conclusion and Recommendations

In conclusion, the European Union's (EU) New Pact on Migration and Asylum is a crucial juncture, offering a unique opportunity to overhaul its migration framework to respect migrants' dignity and rights better while addressing the nuanced needs of both European and African stakeholders. This necessitates a comprehensive strategy that aligns EU migration policies with the intricate migration dynamics prevalent across Africa, acknowledging that effective management requires understanding and cooperation rather than merely control and deterrence.

To realize an effective and respectful system, the EU must extend the breadth of legal migration pathways. This expansion should not only cater to high-skilled migrants but also acknowledge the vital contributions of low-skilled workers, thereby creating a more inclusive approach that reflects the diverse needs of labour markets in both regions. Ensuring the humane treatment of migrants, from their entry to their potential return, underscores the imperative to view migration through a lens of shared humanity and mutual respect.

A foundational element of this revamped approach is the implementation of a genuine solidarity mechanism within the EU, which demands a collective responsibility-sharing among Member States. This mechanism should facilitate a more equitable distribution of asylum applications and support, reflecting the principles of unity and shared purpose. Complementing this internal strategy, enhancing the EU's capabilities to respond effectively to crises, including sudden influxes of migrants or emergency situations in their home countries, is essential for a proactive and prepared migration management system.

The importance of sustainable return and reintegration practices cannot be overstated. These practices should respect the rights and dignity of individuals, ensuring that returns are safe, voluntary, and conducted in a manner that facilitates reintegration into their home communities. This approach not only respects the agency and dignity of returnees but also contributes to the stability and development of their home countries.

31 European Commission. (2023). New Pact on Migration and Asylum. European Commission. Retrieved from https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/migration-and-asylum/new-pact-migration-and-asylum_en

32 Beirens, H., & Le Coz, C. (2023, December). One phase closes for the New Pact on Migration and Asylum. Now another begins. Migration Policy Institute. <https://www.migrationpolicy.org/news/new-pact-migration-asylum>

33 European Commission. (2020). Questions and Answers: New Pact on Migration and Asylum. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707

34 See European Commission. (2020). Questions and Answers: New Pact on Migration and Asylum

Moreover, engaging in transparent policymaking that actively includes diverse stakeholders—from migrant communities to African governments and civil society—ensures that policies are grounded in the realities of migration and reflect a wide range of perspectives and needs. Addressing the root causes of migration through targeted investments in conflict resolution, economic development, and climate change mitigation offers a long-term strategy that tackles the drivers of forced migration at their source.

By adopting these comprehensive recommendations, the EU stands to develop a migration management system that truly benefits migrants and host communities alike. This system would not only represent a significant advancement in the EU's migration and asylum policies but also exemplify a commitment to a more humane, equitable, and effective approach to addressing the challenges and opportunities presented by global migration.

ABOUT THE AUTHOR

Dr. Margaret MONYANI is a Senior Researcher working on migration at the Institute for Security Studies (ISS), Pretoria



HOW THE EU COULD DELIVER ON THE PACT'S PREDICAMENTS THROUGH MORE BALANCED EXTERNAL COOPERATION

Dr. Eleonora MILAZZO
Migration Policy Centre & Egmont Institute

The Pact will likely increase the transfer of responsibilities to non-EU countries, particularly in North Africa and the Western Balkans. Significantly, though, the reform leaves essentially unsolved the shortcomings that make the EU asylum system less resilient to shocks. In addition, it does little to increase the chances that non-EU countries will accept more returns with better conditions for the migrants.

To deliver on the Pact's own predicaments and simultaneously strengthen its external action, the EU should move beyond a purely transactional approach vis-à-vis partner countries and fully embrace the fact that cooperation on mobility issues is not a mere means to prevent spontaneous arrivals but an area of strategic importance for the EU.

Impact of the Pact on the external dimension of migration policy

The Pact on Migration and Asylum will have a major impact on what happens at the EU's external borders. Although its provisions are 'internal' in the sense that they are decided upon and adopted autonomously by the EU, the entire reform will have significant implications for returns and readmissions as well as migration towards the EU. At the same time, its implementation will be premised—at least in part—on the cooperation of non-EU countries.

For these reasons, reflecting strategically on the external dimension of EU migration policies is not only important but also instrumental to achieving a more effective and fairer EU migration and asylum system.

When it comes to the Pact, the expansion of the use of accelerated border procedures and the definition of 'safe third country' are two aspects that are likely to be particularly consequential for the EU's relations with its partners.

First, regarding accelerated border procedures, the reform aims to speed up the returns of those found not eligible for international protection, including via detention-like conditions and a revamped biometric system that risks loosening protection safeguards.³⁵

Therefore, the compromise reached during the negotiations rests on the viability of accelerating the processing of asylum requests at the external borders and returning people to non-EU countries. The track record of returns and readmission agreements, though, suggests that the prospects of achieving this objective might be uncertain without a substantial change of pace in the EU's relations with third countries.

Second, the legal changes introduced by the Pact will widen the range of circumstances where people can be sent to countries or parts of countries deemed safe. Specifically, the reform expands the definition of a 'safe third country.' To be defined as such, a given country should respect certain protection standards and present a proven connection with the returnee (e.g., through family links and previous residence in the country). Under the new rules, the definition of this connection will be determined under national law, leaving greater discretion to the Member States, which could potentially opt to return rejected asylum applicants to a country of transit.³⁶

35 Vasques, Eleonora (2024) 'New EU migration rules loosen protections for minors in gathering of biometrics', Euractiv, 13 February.

36 Woollard, Catherine (2023) 'Editorial: Migration Pact Agreement Point by Point', ECRE, 9 June.

This could represent a substantial shift of responsibility from the EU to transit countries, give the latter more leverage in negotiating their terms of cooperation, and create perverse incentives to lower reception and protection standards.

The art of the deals

The Pact's legislative texts should be read in conjunction with the constellation of bilateral and EU-level migration deals that have accompanied the negotiations.

Starting with the precedents set by the EU-Turkey statement and the Italy-Libya Memorandum of Understanding, the last months have seen a proliferation of various deals, including, most notably, the agreement with Tunisia signed 'in the spirit of Team Europe,' the one between Italy and Albania on the construction of two detention centres, or the recent agreements with Mauritania and Egypt, all concluded amidst serious concerns about the protection of fundamental rights.

In fact, the external dimension of migration policy, particularly at the bilateral level, has expanded significantly in the last years, acquiring more relevance and covering a wide range of policy tools.³⁷

Faced with failed or difficult reform attempts and the increasing salience of migration in domestic debates, the EU and the Member States have found in these deals, some of which fall out of the EU framework, a 'blueprint' of joint multilateral cooperation and the winning card to make the EU asylum system more manageable.³⁸ This has happened despite poor fundamental rights protection in partner countries, the deals' poor implementation track record, and no substantial evidence that these agreements increase return rates or deter new arrivals.

Three challenges

What should we expect from the implementation of the Pact?

First, the outlook of the Pact's implementation suggests that the EU's reliance on third countries may not be effectively counterbalanced by stronger internal migration management. The complex mechanism of responsibility sharing agreed upon as part of the Pact, in particular, risks replicating the same pitfalls of the existing system, including the concrete risks of disproportionate pressure on Member States of first entry.³⁹

The new system, therefore, is unlikely to prove more resilient to external shocks or so-called instrumentalisation attempts than the existing one. The concern voiced repeatedly during the negotiations is that the reform might produce a permanent state of exception in migration management and cyclical crises.⁴⁰ In addition, this is also likely to expose the EU to the risks of becoming more dependent on unreliable partners with questionable legal and ethical standards.

Second, on a more symbolical level, these pitfalls of the reform risk projecting the idea that the EU and its Member States prioritize bringing to a halt irregular migration but remain unable or unwilling to deliver a much more effective asylum system within the EU, let alone create alternative regular pathways.

The migration deals will likely reinforce this message because they signal the Member States' scepticism or disillusion towards a truly European, systemic solution to international partners. In principle, these agreements, including bilateral ones, can be complementary to EU action and not necessarily in competition with it.⁴¹ However, in the context of the recently adopted reform, the migration deals appear more like safety nets to appease national constituencies rather than building blocks of a broader strategy for a coherent, multi-level external action.

The idea that the most meaningful and effective solutions in regulating migration are devised ad hoc by European governments risks overshadowing any other European alternative and contributes to the impression that the Union is heading towards 'non-Europe' in migration policy.⁴²

Third, and relatedly, more challenges could come from underestimating that cooperation focused predominantly on halting spontaneous arrivals might be met with scepticism in the third countries concerned, particularly in Africa.

The latter have traditionally been reluctant to strike returns and readmission agreements or migration partnerships without better prospects of regular migration and structural benefits for their economies. In addition, these countries also have to grapple with internal instability and the increasing politicization of migration. Even when these partnerships work out, the new system could trigger a race to the bottom in which human rights protection is side-lined.

37 Fontana, Iole and Matilde Rosina (2024) 'The Tools of External Migration Policy in the EU Member States: The Case of Italy', *Journal of Common Market Studies* (early view).

38 Fox, Benjamin and Eleonora Vasques (2023) 'Tunisia pact a 'blueprint' for new 'cash for migrant' deals, says EU chief', *Euractiv*, 27 June.

39 Neidhardt, Alberto-Horst (2024) 'Navigating the New Pact on Migration and Asylum in the shadow of Non-Europe', *European Policy Centre*.

40 Sundberg Diez, Olivia (2023) 'EU Crisis Regulation: Securing reforms or constructing a crisis?', *European Policy Centre*.

41 Fontana, Iole and Matilde Rosina (2024) 'The Tools of External Migration Policy in the EU Member States: The Case of Italy', *Journal of Common Market Studies* (early view).

42 Neidhardt, Alberto-Horst (2024) 'Navigating the New Pact on Migration and Asylum in the shadow of Non-Europe', *European Policy Centre*.

Looking ahead: beyond a transactional approach

The EU has often been described as providing the ideal conditions for the development of a comprehensive migration policy but, almost ironically, governing migration continues to appear almost utopic.⁴³

Externally, the EU and its Member States continue to project an image of a Union that concentrates on limiting arrivals and shifting responsibility for migration management to third countries rather than improving internal responsibility sharing radically and providing regular pathways.

The plethora of agreements and deals monopolized by the concern to stem migration and tackle its ‘root causes’ rests on dubious empirical and legal premises while further amplifying the EU’s exposure to other countries’ agendas and its difficulties in convening a coherent strategy.

Despite these challenges, to deliver on the Pact’s predicaments and simultaneously strengthen its external action in the field of migration, the EU and its Member States should openly and convincingly counter the idea that third countries are paying for the EU’s reluctance or inability to manage migration more effectively within the Union.

The first step in this direction would be to ensure that migration management does not remain a source of vulnerability for the Member States and the Union as a whole.

The Pact is unlikely to mark the much sought-after change of pace in this respect. Still, it will be fundamental to ensure that the new rules are implemented swiftly and in a way that enhances the EU’s credibility regarding human rights protection. This will also mean ensuring that readmission agreements to return rejected asylum seekers and all other existing and new deals with third countries respect international human rights law standards.

Second, a new logic for external cooperation based on mutual economic benefit and cross-policy action might help the EU strengthen its position. The legislative texts making up the Pact reference the importance of doing so, and progress on this aspect should indeed be drastic.

Specifically, Talent Partnerships represent a promising tool outlined in the Pact that has the potential to support holistic, multistakeholder development cooperation involving third countries, the EU, its Member States, and the private sector.

Importantly, Talent Partnerships are envisaged as having a solid labour mobility component but also including capacity building, education, and regular migration objectives.

Despite this broader scope, Talent Partnerships still risk being dominated by migration control priorities, including border management and readmission. Negative conditionality linked to short-term containment risks discouraging third countries from undertaking these partnerships and also hampers private sector involvement. Therefore, for a much more sustainable cooperation, it would be important to work on scaling up and operationalizing Talent Partnerships while avoiding strict negative conditionality.⁴⁴

More broadly, it could be useful to redefine Africa-to-Europe relations based on mutual economic benefit, for example, by harnessing the potential of European business investment in manufacturing and agri-food value chains across the African continent to accelerate the global energy transition, tackle inequalities, and support demographic shifts.⁴⁵ This should go hand in hand with establishing fast and unbureaucratic rules to support labour migration, including stronger frameworks for the accelerated recognition of qualifications.

ABOUT THE AUTHOR

Dr. Eleonora MILAZZO is a Research Fellow at the Migration Policy Centre (MPC), San Domenico di Fiesole and an Associate Fellow at the Egmont Royal Institute for International Relations, Brussels



43 De Brouwer, Jean-Louis (2023) ‘Is Governing Migration a Utopia?’, Egmont Institute.

44 Tsourdi, Evangelia (Lilian), Federica Zardo, and Nasrat Sayed (2023) ‘Funding the EU’s external migration policy: ‘Same old’ or potential for sustainable collaboration?’, EPC.

45 Tanchum, Michael (2024) ‘Africa-to-Europe value chains: How nearshoring can mitigate Europe’s migration crisis and aid energy transition’, ICMPD.

THE EXTERNAL DIMENSION - COOPERATION WITH THIRD COUNTRIES

Dr. Laurence HART

International Organization of Migration (IOM)

The New Pact on Migration and Asylum is the result of an effort by the European Commission to manage and normalise migration in the long term. In the following comment, the Coordination Office for the Mediterranean of the International Organization for Migration presents a series of reflections on the potential implications the final adoption of the New Pact could have on migration management in the Mediterranean. It argues that the terminology of the New Pact highlights a shift in narrative that understands migration as a structural phenomenon to manage in its complexity. It also underlines that migration should be manageable under a comprehensive, rights-based, whole-of-route approach grounded in cooperative partnerships. These should seek to protect the safety, rights, and dignity of migrants in a way that is beneficial for societies of origin, transit, and destination. In this sense, developing regular pathways for migration is essential to promote safe and well-managed human mobility while addressing socio-economic needs and supporting the world's most vulnerable.

Introduction

The New Pact on Migration and Asylum is the result of an effort by the European Commission to manage and normalise migration in the long term. It aims to provide “certainty, clarity and decent conditions for the men, women and children arriving in the EU, and that can also allow Europeans to trust that migration is managed in an effective and humane way”.⁴⁶

One of the key roles of the Coordination Office for the Mediterranean of the International Organization for Migration (IOM) is to understand how new institutional frameworks could impact migration management in the Mediterranean region. This is particularly relevant given the strong dimension attributed to externalisation and partnerships in the New Pact and based on which existing and future initiatives between the EU and EU Member States with countries in the Mediterranean basin (and beyond, including West Africa and the Sahel region, from which many of the flows crossing the Mediterranean begin) could be developed and strengthened.

In the spirit of cooperation needed to ensure safe, orderly and regular migration, IOM welcomes the political agreement between the European Parliament and the Council on a New Pact on Migration and Asylum. However, much of its success

will depend on its actual operationalisation. In this context, IOM promotes an operationalisation of the New Pact that is based on and that ensures the respect of migrants’ fundamental rights, including in the cooperation of origin and transit countries, in such a way that it leads to more predictable, coordinated and humane responses across all dimensions of migration and asylum across Europe, and in the Mediterranean region more precisely. Adopting the New Pact could thus represent a step forward in promoting safe and regular migration pathways across the Mediterranean basin, which is one of the key pillars of our work in the region.

In this context, two main elements are worth being underlined. First, there is an apparent effort to “manage and normalise migration for the long term”, thus contributing to a changing of narrative from migration as an emergency and crises-related event to migration as a structural phenomenon. Second, the New Pact seeks to develop partnerships with third countries further: the successful cooperation with countries of origin and transit (including at relevant points along the routes) is a prerequisite for the successful implementation of the New Pact if aligned to international legal frameworks and based on the upholding of human rights standards. This is particularly relevant for the Mediterranean area, where migration flows affect all countries in the basin, with different drivers and impacts on origin, transit, and destination countries, as well as different approaches in managing migration.

Changing narratives

The New Pact on Migration and Asylum comprises a complex and extensive package of twelve documents to regulate migration through a broad spectrum of processes, namely five proposals on legislation, three Commission recommendations, one set of Commission Guidance, one Roadmap on the implementation and one Commission Working Document. By building on the already-existing Common European Asylum System package presented in 2016, the New Pact on Migration and Asylum covers a variety of matters related to migration, including, among others, screening of third-country nationals (TNCs), international protection, search and rescue operations at sea, and preparedness and management of crises related to migration.

The main difference compared to past efforts is the inclusion of a new solidarity mechanism for those Member States under pressure from increased arrivals,⁴⁷ which aims to ensure that the overall migration and asylum system is “predictable” and “sustainable”. On this, two considerations should be noted: on the one hand, as IOM, we welcome the importance given to solidarity within the New Pact as well

⁴⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (2020), p. 1

⁴⁷ As of March 2024, the solidarity mechanism seems to be on a voluntary basis; it is not clear whether in the future this will change into a mandatory mechanism and, in case, on the basis of which conditions (i.e. how the “pressure from increased arrivals” would be quantified and calculated).

as to relocation of applicants of international protection, which we see as an essential element for better migration and asylum management. The latest figures show that by early 2023, more than 1000 asylum seekers had relocated from Cyprus, Greece, Italy, Malta, and Spain. On the other hand, however, adopting a holistic approach to analysing migration trends across the Mediterranean is necessary. Numbers on arrivals to the EU southern borders are often used in sensation-seeking ways by politics and media alike, focusing on the heavy (logistical) impact these may have on local populations (as, for example, in relation to the islands of Lampedusa, Italy or Lesbos, Greece) rather than the actual impact at national level or on the significance in terms of humanitarian needs.⁴⁸

While the New Pact mentions that “since the refugee crisis of 2015-2016, the challenges have changed [...] mixed flows of refugees and migrants have meant increased complexity and an intensified need for coordination and solidarity mechanisms”, the need for a moral framework that addresses all aspects of migration and asylum governance, envisioning the governance of migration and human mobility as safe, orderly, inclusive and human rights-centred must be reiterated. As a matter of fact, the very same Communication presenting the New Pact argues that “the task facing the EU and its Member States, while continuing to address urgent needs, is to build a system that manages and normalises migration for the long term and which is fully grounded in European values and international law.”⁴⁹ Identifying the need for a robust crisis preparedness and response system (Chapter 3 of the Pact) highlights how crisis management is just a part – temporary and extraordinary – of migration management. This contributes to promoting a narrative that, as IOM, we have supported for years – that shifts from migration management as a reaction to crises to the understanding that migration and mobility can be manageable under a comprehensive, rights-based, whole-of-route approach grounded in partnerships and cooperation.

Partnerships and Cooperation

In addition to the above, key elements of the Pact relate to externalisation and strengthening cooperation with third countries for better migration management: The New Pact on Migration and Asylum aims to reinforce international partnerships to ensure effective returns, combat migrant smuggling more effectively, and develop legal migration channels.

It is essential to underline that while IOM does not support extraterritorial processing, which poses numerous legal, ethical, and operational challenges, it supports its Member States in promoting cooperation with third countries for the development and implementation of regular pathways, including those related to labour, education, humanitarian support, and family reunification. This is in line with the priorities set by several Governments of the Mediterranean region, including Italy, which in 2024, when assuming the presidency of the G7, identified “enhancing regular pathways” as a key priority, together with tackling the root causes of irregular migration and combating migrant smuggling and human trafficking.

In line with this, in early 2024, IOM launched the project “Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in Italy and North Africa” (THAMM+) to facilitate the mobility of newly qualified and trained workers in key sectors between Tunisia and Morocco, and Italy. The initiative, supported by the Italian Government and the European Commission, aims to address labour market shortages jointly identified by relevant authorities to support capacity building and training also for workers remaining in their country of origin. This is embedded in the renewed vision of the Italian Government, which understands that migration policy should be based on consolidating pathways between countries for mutually beneficial labour migration. The “Rome Process”, ensuing from the International Conference on Development and Migration held in Rome on 23 July 2023 and the Italy-Africa initiative, at the early stages of their implementation, also embody such shared commitment to foster regular and safe pathways for migration that can drive sustainable development processes.

In this context, developing cooperation agreements that establish regular pathways strengthens and complements the multidimensional external cooperation aspect called for by the New Pact, as it keeps migration “central to the EU’s overall relationships with key partner countries of origin and transit”.⁵⁰ The added value of such initiatives is also their multilateral dimension, often engaging traditional actors (national authorities, international organisations, civil society) and non-traditional actors (private sectors, diaspora groups) in their design and implementation. It is within this framework – and feeding towards the objective of the New Pact to develop mutually beneficial partnerships that IOM is promoting a new Europe-Africa initiative (Pathways to Prosperity - Unlocking the potential of human mobility between and within Africa and Europe), bringing together

48 While there has been an increase in the number of arrivals on the Central Mediterranean to Italy, IOM sees this as primarily as a humanitarian emergency in terms of suffering and fatalities. The number of migrants arriving by sea in Italy (157,652 people), did not reach the numbers already recorded in Italy in 2014 (170,000) and 2016 (181,000). The number of deaths and missing migrants in the Central Mediterranean in 2023 (2,498) increased by 75% compared to 2022 (1,427).

49 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (2020), p. 1 (emphasis added)

50 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (2020), p. 17

key African and European state and non-state actors, including the diaspora and private sector, to enhance the facilitation of the orderly movement of people between and within Africa and Europe to harness the full potential of human mobility for development and prosperity.

Conclusion

The New Pact is ambitious in its efforts to build new and enhance existing partnerships with third countries. As the success of the New Pact hinges on its external policy dimension, we, as IOM, hope that this can instill new impetus for the development of solid cooperation among key stakeholders. Cooperation should be holistic and comprehensive, ranging from needs related to emergency-driven solidarity to planned relocation and development of regular pathways.

While it is true that Member States have bilaterally sought new forms of cooperation with third countries, the development of partnerships that aim to protect the safety, rights, and dignity of migrants while addressing and seeking solutions to the causes and impacts of human mobility should be seen as complementary to the New Pact on Migration and Asylum.

Sustainable partnerships are built on the understanding that goals and ownership are determined and shared by partners' common views and aspirations: these are grounded in human rights and aligned to the frameworks safeguarding them. On this, it is important to reiterate one final point: partnerships focusing on migration management should avoid a transactional approach, as a focus on leverage and conditionalities would make relations less sustainable and less predictable. This would not only limit the ownership of partner countries but ultimately reduce the benefits that people on the move can have from such multilateral frameworks. Instead, when developing them, we should focus on migration as a structural phenomenon, which should be managed in a safe, orderly, inclusive, and human rights-centred way.

ABOUT THE AUTHOR

Dr. Laurence HART is the Director of the Coordination Office for the Mediterranean, and Chief of Mission for Italy and Malta, Representative to the Holy See of the International Organization of Migration (IOM)



THE EXTERNAL DIMENSION OF MIGRATION – CHALLENGES AHEAD

Orsolya RACZOVA
GLOBSEC

This chapter explores some of the instruments and mechanisms related to various aspects of the external dimension of migration and the externalisation of migration through bilateral and multilateral agreements, such as the EU-Turkey deal. Such agreements have proven to reduce irregular arrivals to the EU in certain time periods; however, challenges related to implementation and humanitarian concerns have been voiced over the years. Therefore, a comprehensive approach with an impact assessment should be conducted before concluding similar agreements.

Member States with an external EU border have been under tremendous pressure during unprecedented migration waves, in particular during the 2015-2016 migration crisis, during which one of the main problems was the large number of arrivals within a short amount of time: the EU received more than a million asylum applications within a year, and the majority of the asylum seekers arrived in only a handful of EU countries, including small Greek islands, which were not ready to welcome and to process such a big number of asylum-seekers. This crisis created domestic political tensions and inter-member state conflicts within the EU due to an increased burden on some countries while a smaller burden on other Member States. Considering the current global geopolitical dynamics, migration will continue to affect the EU.

After years of heated discussions, in December 2023, a political agreement was reached by the European Parliament and the Council on the Pact on Migration and Asylum. The

Pact is a comprehensive package of different regulations targeting internal and external migration dimensions. Moreover, agreements concluded with third countries involving various legal, economic and financial instruments play a vital role in the external dimension, such as the EU-Turkey or the EU-Tunisia deal, while “externalisation”⁵¹ linked to the external dimension, although not identical, refers to measures to prevent migration at source, outside of the EU’s territory. The following paragraphs will explore and assess some of the opportunities and challenges linked to such agreements, particularly through the lenses of the EU-Turkey deal.

Bilateral agreements: the EU-Turkey deal

Bilateral and other similar agreements between the EU and third countries, as well as between individual EU Member States and third countries, have brought mixed results during the earlier years. Such deals can potentially decrease the number of irregular crossings, thus alleviating some pressure from Member States along the EU’s external borders, such as Greece. With the 2016 EU-Turkey deal, the intention was to stop irregular migration from the Turkish shore to Europe, Greece in particular, during the peak of the migration crisis starting in 2015. Irregular arrivals dropped by 97% after the EU-Turkey deal came into force, according to 2018 figures. Moreover, death at sea has also dropped significantly along the respective routes.⁵² However, other factors were at play, such as the closure of the Western Balkan route, that contributed to the drop in arrivals.

Such agreements with third countries are attached to conditions, usually both financial and non-financial, on both sides. Turkey was to take actions to limit irregular arrivals to Europe by stronger border protection and preventing new routes from opening between Turkey and Greece, while the EU was to resettle those arriving legally (and sending back irregular arrivals to Turkey on a 1-to-1 basis). Border protection measures and to curb irregular migration by “any necessary measures”⁵³ from Turkey to Greece have been criticised by humanitarian organisations, where the approach and tactics were often questionable and inhumane. Another example subject to similar criticism is an agreement between the EU

and Libya, where the EU provides aid to Libya in exchange for its cooperation to reduce the flow of irregular and other migrants while abuse, torture and other forms of human suffering in Libyan detention centres have been reported.⁵⁴

The EU has made significant commitments towards Turkey to support the country’s efforts with a 6 billion Euro aid⁵⁵ to improve the humanitarian situation faced by refugees in the country, reduce visa restrictions to Turkish citizens, update the customs union and re-energize Turkey’s EU accession talks.⁵⁶ The latter has been particularly complex since accession and membership are attached to set conditionalities, and EU-accession discussions with Turkey have been complicated, even frozen in times. Throughout the years, Turkish officials have expressed dissatisfaction with the EU not meeting its promises, including customs union and visa-free travel attached to the deal, and in 2020, lifted their land border and sea controls, forcing European leaders quickly to the negotiation table. Such politicisation of migration has happened on several occasions throughout the years and will likely continue in the future as well. Thus, such agreements and dependence on third countries may give third countries an upper hand in other political and economic negotiations with the EU.

Challenges ahead

Many EU countries with an external border support the pact’s external dimension. Both Greece and Cyprus expressed that irregular mixed migration can only be prevented in partnership with origin and transit countries.⁵⁷ The EU signed a Memorandum of Understanding with Tunisia on 16th July 2023, prioritising measures against irregular migration, and more recently, on 20th January 2024, all EU Member States signed the Samoa agreement, or the so-called post-Cotonou agreement, under which 79 countries agreed to accept the return of any of its nationals who are illegally present in EU countries.

While such agreements are a viable option, at least two issues should be further considered: challenges related to returns and readmissions and burden sharing globally. First, implementation, specifically the return and readmission

51 Bernd Parusel (2023) ‘The external dimension of EU migration policy – new proposals, possibilities, and risks’, Swedish Institute for European Policy Studies, <https://www.sieps.se/en/publications/2023/the-external-dimension-of-eu-migration--policy--new-proposals-possibilities-and-risks/>

52 Laura Batalla Adam (2019), ‘Three years on, was the EU-Turkey migrant deal worth it?’, Friends of Europe, <https://www.friendsofeurope.org/insights/three-years-on-was-the-eu-turkey-migrant-deal-worth-it/>

53 European Commission, ‘Implementing the EU-Turkey Agreement – Questions and Answers’ https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_16_1494

54 Amanda Gray Meral, ‘Learning the lessons from the EU–Turkey deal: Europe’s renewed test’, ODI, <https://odi.org/en/insights/learning-the-lessons-from-the-euturkey-deal-europes-renewed-test/>

55 A Europe that protects: What is the EU-Turkey deal?, International Rescue Committee, <https://www.rescue.org/eu/article/what-eu-turkey-deal>

56 European Commission, ‘Implementing the EU-Turkey Agreement – Questions and Answers’ https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_16_1494

57 Angeliki DIMITRIADI and Asli Selin OKYAY (2023), ‘Are partnerships with third countries an effective way forward for EU migration management?’, HELLENIC FOUNDATION FOR EUROPEAN & FOREIGN POLICY (ELIAMEP), <https://www.eliamep.gr/wp-content/uploads/2023/11/Perspectives-2-Migration.pdf>

clauses, has been challenging. Irregular migrants ordered to leave the EU for their country of origin or third country on average between 2009 and 2018 is only at 38%; in 2018, this rate was 36%; one of the reasons is difficulties in cooperating with the countries of origin.⁵⁸ For example, under the EU-Turkey deal, only 2 140 people were returned to Turkey from Greece because Greece acknowledged Turkey not necessarily being safe for these potential returnees.⁵⁹ In other cases, such countries are practically non-functional or failed states; moreover, in many cases, it is impossible to tell which state the migrants should be returned to. Overall, returns and readmissions as part of EU – third country or EU Member State – third country bilateral agreements are not documented uniformly on an EU level. Thus, improvement in this regard is still needed to have a more comprehensive view.⁶⁰ Moreover, most EU Member States are not able to comprehensively assess how their bilateral readmission agreements affect return and reintegration in third countries.

Second, a global perspective should be considered: developing countries, especially close to or neighbouring conflict zones, already host large numbers of refugees and other migrants. In fact, 76% of the world's refugees are hosted by low- and middle-income countries, many of which are unable to support their needs adequately.⁶¹ Therefore, bilateral agreements must carefully consider what economic and financial support mechanisms should be offered, with a short-, medium-, and long-term impact assessment. Moreover, these countries are often under high pressure already, with bad refugee camp conditions, and often deemed unsafe for refugees. The latter is particularly of concern from a humanitarian and safety point of view when Europe returns refugees either as part of bilateral deals or other means. This should always be considered while preparing bilateral deals especially including processing and readmission.

Concluding remarks

The reality is that geopolitics and migration are increasingly interconnected. The security and economic situation in the countries and regions where most of Europe's asylum seekers and other migrants originate from in many cases has not been improving; therefore, migration, specifically irregular migration, is not going away.

While implementing tools of the external dimension and externalising migration, such as instruments and mechanisms related to bilateral deals, on the one hand, have positive impacts, especially when it comes to decreasing pressure on the EU frontline countries, on the other hand, it raises questions related to implementation, human rights, conditionality, politicisation as well as long-term durability. Considering all these implications with a comprehensive impact assessment is advisable before concluding such agreements.

ABOUT THE AUTHOR

Orsolya RACZOVA is Research Associate at GLOBSEC (Security Policy Aspects of Migration in Europe)



58 European Court of Auditors (2020), 'EU Migrant return policy – cooperation with third countries on readmission', https://www.eca.europa.eu/lists/ecadocuments/ap20_07/ap_migrant_return_policy_en.pdf

59 'A Europe that protects: What is the EU-Turkey deal?', International Rescue Committee, <https://www.rescue.org/eu/article/what-eu-turkey-deal>

60 More information and recommendations regarding bilateral readmission agreements here: European Migration Network (2022), 'Bilateral Readmission Agreements', https://home-affairs.ec.europa.eu/system/files/2022-10/EMN_INFORM_bilateral_readmission.pdf

61 UNDP news centre (2023), 'Increased support to refugee-hosting countries key to addressing rising displacement', <https://www.undp.org/press-releases/increased-support-refugee-hosting-countries-key-addressing-rising-displacement>

07. CONCLUSIONS

THE NEW PACT ON MIGRATION AND ASYLUM: WHAT IS NEW, WHAT IS CHALLENGING AND THE WAY FORWARD

Dr. Loredana TEODORESCU
Head of EU and International Affairs, Istituto Luigi
Sturzo

The new Pact on Migration and Asylum represents an important effort to manage migration with a truly EU approach, which comprehensively touches upon its different aspects and tries to restore trust, fair cooperation, and effective coordination among Member States. It can be a sound basis for further adjustments and improvements, always keeping in mind the values the EU is based upon and which should be reflected in its policies, too. However, the feasibility and implementation of the different measures will be the real test. The article, after highlighting why a reform is needed, analyses what is new and what is challenging in the Pact, before reflecting on the way forward.

Why a reform is needed

Presented by the Commission at the end of September 2020, the New Pact on Migration and Asylum represents a concrete and comprehensive attempt to revise EU policy in the field, tackling all its aspects by suggesting different policy or legislative instruments to overcome the emergency mode.

As stated by the Commission itself, the Pact's attempt was, first of all, to rebuild trust among the Member States through better and more effective procedures and to strike a new balance between solidarity and responsibility.

Mutual trust, which was indeed seriously compromised by the past migration crisis, causing friction and tensions based on the different perceptions and interests of the Member States on the topic.

To overcome them, the Commission has tried to pursue the most inclusive approach ever: intensive preparatory work started already in December 2019 with several consultations to carefully integrate all perspectives, showing that “no

one's concerns are more legitimate than the others”, as the Commission's Vice-President Schinas stated⁶². In the end, the suggested Pact resulted since the beginning in a «compromise».

However, a new approach to migration is highly needed, and this is not only related to the need to develop an effective and human approach to managing a transnational phenomenon in the common European space.

The consequences of not having an efficient policy go far beyond migration management. We experienced in the past years how a lack of a common migration policy has an impact on our security because losing control of our borders means not knowing who is crossing them; on politics, with the rise of xenophobic and extreme right parties, fuelling an anti-migration sentiment; and on the whole sense of unity within Europe, contributing to the increase in euroscepticism in countries like Italy, and negatively affecting the external perception of the EU, which looks fragile and divided, but also easily to be destabilised on the migration dossier.

Moreover, migration has always been considered in the last few years as a priority by European citizens and among the top challenges that the EU should face: in the 2022 special Eurobarometer on the future of Europe, for instance, it was perceived as such by 31% - being the fourth EU challenge⁶³, while according to the latest Standard Eurobarometer (Autumn 2023), 28% of Europeans think immigration on the one hand and the war in Ukraine on the other hand are among the two most important issues facing the EU⁶⁴. At the same time, seven in ten Europeans feel the need for and support a European solution on asylum and migration. This also emerged during the Conference on the Future of Europe, an unprecedented exercise of deliberative democracy, where citizens were encouraged to have their say and whose outcomes cannot now be ignored by the institutions.

Migration is also here to stay. Factors causing migratory flows, such as climate change, demographic challenges, conflicts, and instability in the neighbourhood, show that migration will remain challenging for the next decades. While the Member States were busy negotiating the measures and

62 New Pact on Migration and Asylum (europa.eu)

63 Special Eurobarometer on the Future of Europe. (europa.eu)

64 Standard Eurobarometer 100 - Autumn 2023 - dicembre 2023 - - Eurobarometer survey (europa.eu)

the details of the Pact, new episodes or crises highlighted it very well again. The war in Ukraine caused the biggest flow of refugees to the EU ever, although the widespread solidarity and the activation of the directive on temporary protection showed that this crisis is unique, and so is the response. The political instability and humanitarian crisis in Afghanistan following the return of the Taliban regime, as well as the impact of the Ukrainian war on the Mediterranean countries in terms of food security and the recent war in the Middle East, are not without consequences for the EU, too. A worrying development has been the instrumentalisation of migration for political ends at EU external borders, with Belarus in 2021 organising state-sponsored smuggling of migrants into the EU with the explicit intention of destabilising it. Therefore, the EU needs to equip itself with future-proof means of managing migration flows responsibly and fairly, and it cannot just react to crises when they happen. As painful as the process of developing an EU comprehensive approach might be, it is a necessary step to acknowledge that there is no easy and simple answer for a complex and multi-dimensional phenomenon such as migration.

What is new and what is challenging in the Pact

The premises of the Pact clearly acknowledge the challenges that need to be overcome to develop a new EU approach to migration. The Working document accompanying the Pact⁶⁵ highlights the “lack of an integrated approach at the EU level” and the “fragmented and voluntary ad hoc solidarity between Member States”, which “has put a disproportionate strain on Member States of first entry, threatened the political cohesion among Member States and put migrants in vulnerable situations at risk”, as well as the “lack of effective rules for sharing responsibility for asylum applicants across the EU”. The starting point of the whole revision process is very important and represents a needed step forward in terms of a common understanding. The aim of developing a more stable and long-term approach to overcoming the emergency is also essential to change the paradigm and the narrative around migration based on the realistic assumption that migration is a structural phenomenon, not a temporary one.

One of the central controversial aspects addressed by the Pact is related to solidarity, which is defined as mandatory but flexible. All EU countries should express solidarity when needed in exceptional circumstances, but they can choose among different options: relocating people and/or offering financial or operational support. There is always an alternative to relocation, which is considered the red line for some States.

The compromise suggested by the Commission, and then found after years of negotiations, is a historical step, also important for the sense of unity among Member States, but is clearly the concrete outcome of political realism, based on the lesson learnt from the past crisis: voluntary solidarity is clearly not enough, as it did not deliver as expected in previous attempts done by willing Member States; but the mandatory decision to temporarily relocate asylum seekers did not work either as planned in the aftermath of the 2015-2016 crisis, and even generated additional frictions and tensions instead. The result is probably the best one Member States could agree on now. However, it does not reflect the initial promises or remove the contentious Dublin regulation that the country of first entry must deal with an asylum claim. The Pact represents an attempt to go beyond the limitations of the Dublin regulation and reduce pressure on frontline states, even if the burden of reception remains.

At the border, a fast border procedure is introduced to let Member States sort out in an easier way who is a genuine asylum seeker and who is not. This is another aspect which addresses one of the biggest challenges at EU borders. However, it risks creating an additional burden on frontline member states, calling for the related infrastructure and centres at the borders to be able to process the newcomers quickly; human rights defenders and NGOs raised criticism about possible violation of human rights, as faster procedures might not allow for a proper screening based on personal situations. Also, returning those who are not entitled to request protection remains an impellent challenge. So far, the average return rate has been around 40%, and it is unclear how this can change after the introduction of the Pact.

The external dimension has an important role and is considered one of the three pillars of the Pact. The Pact mainly recognises the need to use a multidimensional approach to cooperate with third countries, as it has been clearly emerging in recent years. This implies using all the tools and policies at the EU and its Member State's disposal to secure a win-win partnership with other countries, which are key for managing the migratory flows. Although the external dimension of migration has usually met the agreement of Member States, resulting in the less controversial aspect to agree on, it has not delivered as expected. It is not clear, therefore, if the Pact will help overcome the barriers which have limited the results of the cooperation so far. A vital aspect introduced by the Pact is related to talent partnerships, which will enhance legal pathways to the EU while strategically engaging partner countries in migration management.

65 EUR-Lex - 52020SC0207 - EN - EUR-Lex (europa.eu)

These partnerships aim to boost mutually beneficial international mobility by better matching labour market needs and skills between the EU and partner countries. By doing so, they address legal migration: although often overlooked, this is an important aspect of a well-functioning migration policy.

Despite the concerns and doubts, which are related mainly to the implementation phase following the formal adoption of the Pact, it is worthy to recognise the important effort to manage migration with a truly EU approach, which comprehensively touches upon its different aspects and tries to restore trust, fair cooperation, and effective coordination among Member States. It is also worthy to point out the willingness to continue developing an EU policy, moving forward by qualified majority instead of unanimity. This allows the EU institutions to set an important precedent, fully benefiting from the potentialities provided by the Lisbon Treaty since its entry into force in 2009, which abolished the unanimity requirement for the migration and asylum policies, recognising that the “EU develops a common policy” in those fields. This bold move will add uncertainty to the implementation of the legislative measures by all Member States, but once in force, all Member States are formally submitted to them, regardless of their vote.

The way forward

The divisions on migration among Member States have deeper roots and reflect a broader debate on the role the EU should have. On the one hand, some countries like Hungary and Poland believe that issues such as relocation and solidarity on migration at the EU level interfere in the national sphere. They have already criticised the plan and even rejected some key aspects of the proposed reforms, although the process kept relying on the majority. On the other hand, countries like Italy have always called for more EU in this field and can feel that the burden is still on them despite the efforts to revise the system. As Commissioner Johansson stated already at the beginning of the revision process, “no one will be fully satisfied”⁶⁶. This is what a realistic compromise looks like: it is not revolutionary, and it is probably less ambitious than expected, but it still represents an important acknowledgement of the need to proceed as a whole and develop and consolidate a long-term EU approach based on fair and clearer rules, moving forward in its development. This is why the Political agreement reached on all the aspects of the suggested Pact, even the most controversial, was considered “historical”.

However, the feasibility and implementation of the different measures will be the real test. The system put in place is complex and won't necessarily be more predictable as needed, as it is based on many exceptions or different layers and steps: will the Member States at the frontline be able to manage the faster border procedure? What happens if all Member States decide to show solidarity only financially and operationally and refuse any kind of relocation? How can returns, which are also important to functioning and credible migration management, be improved? The burden seems to be still placed on countries of first entry, and Dublin is not formally replaced, implying that those countries will mainly benefit from an overall more effective system and a clear form of solidarity.

On the external side, there is still a considerable need to coordinate the different policy instruments better and leverage them by providing concrete legal migration channels and further assessing the impact of the cooperation with third countries, also in terms of respect for human rights and mobility in their regions. The renewed activism of some Member States towards African countries while negotiating the Pact seems to indicate that they still rely more on this kind of cooperation, trying to manage or stop migratory flows before they reach Europe, rather than on a renewed internal approach within the European Union.

If the Pact and the agreement reached are an important step towards a truly common approach to migration, in order not to be a missed opportunity, they still need to be fine-tuned and accompanied by necessary measures during the implementation phase. This means, for instance, strengthening the capacity of frontline Member States dealing with border procedures and those receiving most of the asylum applications; always ensuring the protection of the human rights of migrants, which cannot be under-prioritised for the willingness to reduce flows; and ensure that the solidarity system works by encouraging some willing Member States to lead by example and provide relocation when needed. It means also enhancing the return rate by better analysing the obstacles and addressing them, at least at the EU Level, where Member States can do something to improve the current situation and engage more effectively third countries in readmission agreements by leveraging the multi-dimensional cooperation, but also recognising their needs and requests, in a true partnership. On the external side, it also means learning from past mistakes and enhancing the coordination among Member States, for instance, coordinating what they offer regarding incentives and opening more predictable legal channels.

66 Commissioner: No one will like new EU migration pact (euobserver.com)

And acknowledging that the internal and external dimensions are complementary: working with non-EU countries cannot replace the need for an EU approach to migration. These two dimensions are both essential and needed.

If the system proposed is well implemented by all, it can help Member States to restore trust among themselves and put aside past tensions over migration, overcoming the stall and making the EU stronger also on the international stage. However, if the system is not fine-tuned to overcome the already identified challenges and is not properly implemented, it can turn into a missed opportunity. After years of negotiations, while the momentum is not there anymore, the probability that the new legislation will start over a completely new process is quite low. On the contrary, what has been achieved with the Pact can be a sound basis for further adjustments and improvements, always keeping in mind the values the EU is based upon and which should be reflected in its policies, too.

ABOUT THE AUTHOR

Dr. Loredana TEODORESCU is Head of the European and International Affairs, Istituto Luigi Sturzo, Rome



Editors and Copyrights:

© 2024 | All rights reserved

Istituto Luigi Sturzo,

Via delle Coppelle, 35, 00186 Roma RM, Italy

Tel.: +39 06 684 0421

E-mail: infopoint@sturzo.it

Web: <https://sturzo.it/>

Chief Editor: Dr. Loredana Teodorescu

© 2024 | All rights reserved

Hanns Seidel Foundation, Brussels Office,

Rue du Trône 60, 1040 Brussels

Tel.: +32 2 230 50 81

E-mail: brussels@hss.de

Web: Europe.hss.de

Managing Editors: Dr. Thomas Leeb, Angela Ostlender

The views expressed by the contributors to this paper are entirely their own and do not necessarily reflect the views of the Hanns Seidel Foundation and the Istituto Luigi Sturzo, who assume no responsibility for the facts and opinions expressed in this publication or in any subsequent use of this information contained therein. Sole responsibility lies with the authors.

