RESPONSIBILITY-SHARING OR SHIFTING?

IMPLICATIONS OF THE NEW PACT FOR FUTURE EU COOPERATION WITH THIRD COUNTRIES

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Following the adoption of the New Pact reforms, the external dimension of the EU's migration policy will acquire even greater relevance. With prospects of internal responsibility-sharing among member states remaining uncertain, limiting irregular arrivals and facilitating returns are being presented as essential preconditions to avoid putting pressure on national migration, asylum and reception systems. From this viewpoint, securing stable cooperation with third countries will be instrumental for the sustainability of the newly reformed Common European Asylum System (CEAS).

This policy study examines the external dimension of the recently adopted New Pact reforms, specifically the Asylum Procedures Regulation (APR) and the Asylum and Migration Management Regulation (AMMR). The APR includes reformed provisions on safe country clauses that aim to facilitate returns. As for the AMMR, the reform includes a solidarity mechanism to support member states facing disproportionate responsibilities. Yet, the flexibility of this solidarity mechanism combined with

the overall systemic priority of limiting pressure on national reception systems will likely translate into stronger incentives to use funding to contain irregular arrivals.

While the New Pact has manifold policy goals, the containment priorities pursued in the external dimension of the EU's migration policy may fail to reflect the interests of partner countries sufficiently. Instead of promoting more balanced cooperation at the international level, they could lead to further responsibility-shifting to third countries. At the same time, the reforms pay insufficient attention to fundamental rights. This could incentivise cooperation with countries with poor human rights records. Because these also tend to be unstable and unreliable partners, in terms of ensuring adequate protection standards and a genuine commitment to continued cooperation, the external dimension of migration policy might backfire on the EU's goal of achieving a more resilient and fairer CEAS, unless strong complementary measures are taken prior to and during the reforms' implementation.

INTRODUCTION

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Several of the reforms comprising the New Pact on Migration and Asylum are inextricably linked to the so-called external dimension of the EU's migration policy. Due to the uncertainty regarding the functioning and effectiveness of the newly introduced solidarity mechanism, reducing irregular arrivals and facilitating returns are framed by the European Commission and member states as a promising strategy to achieve a more stable EU migration and asylum system.[1] In this context, the EU and member states will likely seek to strengthen partnerships with third countries even further.

Containing arrivals and facilitating returns are not the only priorities of the New Pact reforms, but several new rules have been introduced with these goals in mind. Most relevant are the Asylum Procedures Regulation (APR) and the Asylum and Migration Management Regulation (AMMR). The former allows for an expanded use of safe country clauses, seeking to facilitate returns at the cost of robust legal and procedural safeguards. Meanwhile, the newly established system of mandatory but flexible solidarity under the AMMR could lead to the prioritisation of financial contributions for actions in third countries and a disproportionate focus on containing irregular arrivals.

The new rules therefore risk creating incentives to outsource responsibilities to third countries to obtain short-term advantages for member states. This calls into question the EU's objective of achieving a fairer system and could lead to a further deterioration of protection standards, especially in a context of global geopolitical and economic instability.

Practical and legal challenges related to the implementation of the rules may also arise. As this policy study highlights, these include the failure to sufficiently consider fundamental rights risks when establishing partnerships, and lack of effective cooperation from third countries. Seeking support from third countries will not come without risks for the EU's strategic autonomy either. The Union's commitment to pursuing its strategic interests and acting independently from its partners in other policy areas stands at odds with its dependency on partners to manage migration, particularly when the latter are autocratic regimes.

These tensions around the external dimension of migration policy will likely gain relevance in the new policy cycle as the reforms gradually enter the implementation phase. The expansion of partnerships with third countries is expected to see momentum following gains by centre- and far-right groups, both proponents of such efforts, in the 2024 European Parliament (EP) elections. Up until now, diverse cooperation arrangements have been explored. On top of newly established partnerships at the EU level, such as the one with Tunisia or Egypt, or national ones, like the Italy-Albania Protocol, in May 2024, 15 member states urged the European Commission to seek additional solutions to manage migration, including partnerships with third countries.[2] The EU-level Common Implementation Plan for the Pact, released in June 2024, similarly underscored the importance of intensifying and deepening cooperation with partner countries for "the sustainability of the Pact".[3]

Reducing the number of irregular arrivals and increasing return rates will thus remain priorities for the EU and its member states. This study analyses the provisions of the Pact that will most likely reinforce the ongoing externalisation trend, focusing on their implications for fundamental rights and EU foreign policy. Considering potential risks and the impact on implementation, the study proposes forward-looking reflections, arguing that the EU should work towards establishing balanced partnerships and stronger human rights safeguards.

1. EXPANDED USE OF SAFE COUNTRY CLAUSES UNDER THE APR

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Safe country concepts – which consist of safe country of asylum, safe third country (STC) and safe country of origin – are central to understanding the implications of the New Pact reforms for the external dimension of EU migration policy. Within asylum procedures, 'safe country of asylum' or STC concepts are used to declare an asylum application inadmissible and assign protection responsibilities to a state different from the one where the applicant has applied for asylum. The use of 'safe country of origin' clauses instead allows for a swift examination of asylum applications through accelerated procedures when the applicant's home country is considered safe.

The idea behind these concepts is to swiftly finalise the processing of claims to return asylum applicants arriving from third countries where their lives and freedoms are not at risk. This is meant to avoid burdening national asylum systems and make it possible to concentrate efforts and resources on the processing of other claims.[4]

International refugee law does not bar agreements assigning responsibility for refugees between states, as long as there are sufficient safeguards to guarantee effective access to protection from direct and indirect refoulement and other threats.[5] The overall aim is to encourage states to work together to protect refugees, ensuring a fair balance and division of responsibilities within the international community. It is worth emphasising that 75% of the world's refugees and other people in need of international protection are hosted in low- and middle-income countries.[6] At the end of 2021, refugees living in the EU were estimated to constitute less than 10% of the world's refugees.[7]

Despite this, the increasingly strong appetite among EU member states to outsource refugee protection and externalise migration control to countries outside the EU has led to a greater use of safe country notions in the past years, even before the adoption of the New Pact reforms.

The newly adopted APR is likely to reinforce this trend by reforming and expanding the use of such notions. In particular, it provides for the broader applicability of safe country clauses in the framework of i) the assessment of safety when applying the concepts of first country of asylum and STC; ii) the interpretation of the connection requirement to readmit an applicant to a given safe third country; iii) the possibility of designating a third country as safe country of origin with territorial limitations or exempting certain groups from the designation; and iv) the adoption of a common list for safe countries of origin and safe third countries, coming on top of national lists.

Collectively, these changes indicate the reinforced importance of the external dimension of EU migration and asylum policy in the New Pact reforms. That said, substantial legal and practical obstacles remain, potentially impacting negatively on the implementation phase of the reforms.

1.1 Safety assessments

Member states may use first country of asylum or STC clauses to declare an asylum application inadmissible. This means that member states can avoid examining an application on the merits when applicants have already received protection from a third country or if they could request and obtain such protection from a safe third country with which they have a connection.

While this possibility already existed in the now repealed Asylum Procedures Directive (APD), the APR makes it easier for member states to give up responsibility and shift it to non-EU countries by lowering the criteria for the safety assessment.

Under the APR, both the safe country of asylum and the STC concepts can only be applied on an individual basis, allowing applicants to challenge the assumption that a third country is safe for them, in continuity with previously applicable rules under the APD. However, the APD required third countries to have ratified the 1951 Refugee Convention or be able to provide comparable levels of protection. The APR instead introduces the concept of access to effective protection. Under this new provision, a country can be considered a safe country of asylum or a safe third country if, in addition to protection from persecution, serious harm, and refoulement, it complies with basic human rights standards, namely access to means of subsistence, essential healthcare and education. These are looser standards compared to the Refugee Convention, which also foresees access to housing and employment, freedom of association, and property rights, among other guarantees.

Furthermore, the APR allows member states to presume that these requirements are fulfilled when there is an agreement between the EU and a third country providing that readmitted migrants will be protected in accordance with the relevant standards and the principle of non-refoulement. This is a significant legal change, considering the EU's efforts to sign agreements of this kind with third countries in recent years, which could render it easier to apply safe country clauses. However, acceptance of these standards does not necessarily guarantee compliance. In fact, evidence of systemic fundamental rights violations committed by EU partner countries considered safe, like Turkey or Tunisia, suggests the opposite.[8] If concluded and implemented on the ground without rigorous assessment and monitoring of the respect of legal and procedural standards, these agreements could lead to sub-standard asylum procedures and reception conditions. The related application of the first country of asylum and STC clauses could ultimately expose applicants to the risk of refoulement.[9]

1.2 The connection requirement

The second element that might broaden the applicability of safe country clauses in admissibility procedures relates to the interpretation of the connection requirement for readmitting an applicant to a given safe third country. The Commission's initial proposal in 2016, which constituted the basis of its 2020 APR proposal, explicitly included transit through a third country as an element establishing a sufficient connection between the applicant and that country for the STC notion to apply.[10] However, after heated negotiations, the adopted legislative text retrains the approach already contained in the APD, leaving it to member states to define the specific connection requirements in their domestic legislation.

At the same time, recitals in the APR provide that the connection requirement is considered satisfied when the applicant has settled or stayed in a given third country.[11] While recitals guide the interpretation of EU norms, they are not legally binding. The inclusion of the notion of stay, next to that of settlement, could, if interpreted loosely, potentially encourage member states to consider passing through a country for a limited period as sufficient for the connection requirement to be met.

On this basis, Italy, which has strongly advocated for such a loose interpretation of the connection requirement, could, for instance, seek to return asylum applicants from Guinea or the Ivory Coast to Tunisia even if they have never lived, worked, or established meaningful connections there.[12]

While this interpretation could translate into a significant shift of protection responsibilities to third countries, its practical effectiveness remains questionable. The case law of the Court of Justice of the EU (CJEU) has already clarified that mere transit is not enough to send applicants back to a third country.[13] This likely explains why the Commission's originally proposed interpretation of the connection requirement from 2020 was not retained. Thus, attempts to outsource international protection responsibilities to countries of transit

when it is not possible to establish meaningful links are likely to fail, even under the newly reformed rules.

However, the APR foresees a possible review of the STC concept in 2025, one year after the entry into force of the Regulation. The prospect of further reforming the STC concept and the connection requirement was emphasised in the May 2024 letter to the Commission by 15 member states, giving further political impetus to this action.[14] It is also worth noting that the European People's Party (EPP) manifesto for the 2024 EP elections called for a "fundamental change" in EU asylum law and the offshoring of asylum procedures to countries outside the EU, in a seeming nod to the UK-Rwanda agreement.[15] Such arrangements are not permissible under the new rules as they involve sending asylum applicants to a safe third country which they never even transited through, thus not fulfilling the connection requirement.[16] Yet, the political weight of the letter and manifesto, especially after the EP elections results, suggests a strong willingness to find novel ways to shift responsibilities to countries outside the EU, including revisiting the connection requirement or further watering down the standards to be considered safe.

1.3 Safe country of origin designation

Regarding the use of safe country clauses in decisions on the merits, the APR allows for examining the merits of an application in a border procedure when the applicant comes from a safe country of origin. Akin to the use of first country of asylum and STC clauses, this was already permissible under the APD. However, the APR makes it mandatory for member states to transpose the concept of safe country of origin into their domestic legislation. Furthermore, it broadens the applicability of this provision by making it possible to designate a non-EU country of origin as safe even when the latter cannot be considered such in its entirety or for all applicants. The provision does so by allowing exceptions relating to specific parts of a territory

or clearly identifiable categories of persons, which codifies in EU law a practice already employed in some member states.[17]

This trend follows the enlargement of the scope of the 'internal flight alternative' concept in the new Qualification Regulation, whereby an asylum claim could be refused if an applicant could move to a safe part of the country of origin.[18] A few member states have recently pushed to apply this concept to Syrian applicants, a move strongly opposed by civil society organisations.[19]

Designating non-EU countries as safe countries of origin with territorial exemptions will increase the number of countries that can be included in the list of safe countries of origin, and thus the possibility to accelerate the asylum procedure. While the possibility to rebut the presumption remains, the restrictive time limits and limited access to legal aid in border procedures will most likely make it difficult to reverse the presumption in practice, in addition to exacerbating the risk of divergent practices among member states.[20]

1.4 Safe third country and safe country of origin lists

The fourth and last novelty relates to both the concepts of STC and safe country of origin. The APR foresees the possibility of adopting an EU-wide list of third countries considered safe, in addition to national ones. This represents the latest attempt to promote the adoption of an EU-wide list concerning safe country of origin, after the latest failure to reach such an agreement in 2017, and the first attempt to adopt a common list when it comes to safe third countries.[21]

Introducing a common EU-wide list could have brought some clarity and eliminate fragmentation: according to the original 2016 Commission proposal, an EU-level list was necessary to limit divergent practices on the use of safe country concepts among member states, thereby contributing

to the goal of further harmonisation of EU asylum rules.[22] This is so because all member states would apply the designation at the EU level, remedying the existing fragmentation.[23]

While the text of the adopted APR confirms this objective, it crucially retains the possibility for member states to adopt their own national lists alongside a potential EU-wide one, undermining harmonisation efforts.[24] If anything, the coexistence of two lists could potentially lead to a wider use of both STC and safe country of origin concepts.

Notably, the co-legislators did not agree on either list when the APR was adopted, meaning that these lists could only be adopted through a future amendment of the Regulation proposed by the Commission. This reflects the difficulties of finding consensus on the safety of non-EU countries, even if their designation should be based on objective criteria, namely fulfilling the conditions of effective protection.

If a common list were adopted, the only situation in which member states would be required to align their lists to the EU one is in case of a suspension of a third country. The APR foresees that a country could temporarily, through a delegated act, or permanently, through an amendment in accordance with the ordinary legislative procedure, be suspended from the EU-wide list following a change of circumstances, meaning if the conditions to be considered safe are no longer met. In case of temporary suspension, member states would not be able to put the same country on their national lists. In case of permanent suspension, member states could only add that country to their national lists if the Commission does not object, a right the Commission could retain for only two years.

Even if alignment between the two lists in case of a suspension could help to prevent fundamental rights violations, it would only marginally contribute to harmonisation efforts, failing to substantially reduce the risk of divergent practices.

2. THE EXPANDED APPLICABILITY OF SAFE COUNTRY CLAUSES: LEGAL AND PRACTICAL CHALLENGES

2. THE EXPANDED APPLICABILITY OF SAFE COUNTRY CLAUSES: LEGAL AND PRACTICAL CHALLENGES

The APR significantly expands the applicability of safe country clauses to declare an asylum application inadmissible or reject it. In doing so, using the safe country notions inevitably results in a shift of responsibility for protection to third countries. The APR provisions reflect the fact that simplified rejections and returns of 'undeserving' asylum seekers have become policy priorities for the EU. Despite the relevance of these changes, two sets of potentially problematic aspects arise, one legal and the other practical, that could result in ineffective implementation of the new provisions.

From a legal perspective, the expansion and possible use of safe country clauses will create incentives to form new partnerships with countries of origin or transit or strengthen existing ones. While the EU and its member states may pursue cooperation with a variety of actors, if partnerships are brought forward without thorough human rights scrutiny, the new provisions risk incentivising the selective recourse to agreements with autocratic third countries that do not guarantee proper protection for asylum seekers or even adequate reception standards.

The Refugee Convention does not explicitly prohibit the use of safe country concepts, although some scholars have cast doubts on their legality altogether.[25] At a minimum, any responsibility-shifting arrangement should guarantee access to the rights provided in the Convention, meaning that its employment is to be considered lawful only when third countries are able to ensure the same level of protection as that provided under the Convention. Notably, this implies not only protection from refoulement, but also access to socio-economic rights. In other words, as highlighted by the UNHCR, the lawfulness of the use of safe country notions to shift responsibility to other countries depends on them being implemented in a spirit of 'burden-sharing', consistently with the legal obligations established by the Convention.[26]

The expanded use of safe country notions is not only problematic because it leads to burden-shifting instead of burden-sharing and could expose asylum seekers to violations of fundamental rights. If judicial authorities find that third countries designated as safe do not have adequate standards in practice, they might also intervene to halt readmissions. Beyond greater risks for asylum seekers, the latter would also make the implementation of the new provisions ineffective.

The EU's and Italy's cooperation with Tunisia illustrates this well. In 2023, Italy adopted a new law on accelerated border procedures allowing for the detention of asylum seekers at the border. Italy also secured Tunisia's commitment to readmit its own nationals in the contentious EU-Tunisia Memorandum of Understanding of July 2023, which the European Commission concluded without a dedicated human rights impact assessment.[27] Following these developments, Italy attempted to detain several Tunisian citizens on the ground that they came from a safe country of origin. However, several Italian courts annulled the detention orders on grounds of lack of safety in Tunisia due to the country's gradual democratic backsliding.[28] As a result, the border procedure is currently blocked in Italy, pending a recent preliminary question before the CJEU.[29]

This scenario of judicial interventions could become more frequent with the application of the new safe country clauses of the APR. While the action of the Italian courts underscores the validity of fundamental rights concerns, it also shows how implementing border procedures based on safe country notions might prove less effective than expected if the desire to remove applicants quickly from EU territory trumps human rights considerations and leads to incorrect designations of non-EU countries as safe.

Nevertheless, in the future, higher numbers of people in border procedures, more lenient criteria for the application of safe country concepts, limited access to legal assistance, and short deadlines for appeals will make procedural safeguards harder to uphold.[30] Effective access to rebuttal of the presumption of safety in judicial proceedings will likely be limited, if not impossible. If unsafe countries are designated as safe and if there is no proper judicial scrutiny of fundamental rights compliance, returnees will likely be exposed to the risk of refoulement.

On top of these legal considerations, the APR and its provisions on safe country concepts could run into practical obstacles during implementation. The removal of applicants from EU territory might be hindered in practice by lack of cooperation from third countries on readmission, be it of their own nationals based on safe country of origin, or readmissions of other third-country nationals based on STC or safe country of asylum concepts.

For the first category, the EU return rate is notably low.[31] While multiple factors contribute to low returns to countries of nationality, lack of cooperation with third countries plays an important role (see Section 4).[32] Regarding the readmission of other third-country nationals to safe third countries, this has also proved hard to implement. By way of example, Turkey has refused to readmit any asylum applicant since the crisis at the Greek-Turkish border in Evros in March 2020.[33]

Despite attempts to incentivise third countries, this general lack of cooperation on return and readmission may persist in the future. Against this background, using safe country concepts to accelerate admissibility decisions or reject applications without realistic return prospects will likely further exacerbate problems for countries having to carry out these procedures, or host rejected applicants. At the same time, it risks leaving people in precarious situations. Given the lack of prospects and the limbo that they would face, it may end up fuelling secondary movements from countries of first arrival to other EU member states.[34] This would conflict with the EU's efforts to discourage irregular onward movements and address related inefficiencies, law enforcement concerns and tensions between EU member states.

The indirect consequences of the expanded applicability of the safe country concept could therefore undermine the core predicaments the New Pact has tried to address, namely improving the resilience and stability of national asylum and reception systems, while also failing to increase return rates.

3. FLEXIBLE SOLIDARITY AND FINANCIAL CONTRIBUTIONS TO THIRD COUNTRIES

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The Asylum and Migration Management Regulation (AMMR) establishes a new system of mandatory, yet flexible solidarity. The aim of this system is to redistribute member states' reception and protection responsibilities, notably those arising from the new mandatory screening and border procedures.[35] The AMMR does not substantially reform the 'Dublin' responsibility-allocation criteria, especially the country of first entry principle. Instead, it stipulates that those member states less affected by migration inflows should provide solidarity by freely deciding among three types of contributions: i) relocations; ii) financial assistance for either capacity building by/in member states in the area of reception, return, and border management, or to support actions within third countries that may have a direct impact on migration towards the EU or improve their asylum, reception, and migration systems, iii) or material support.[36]

This mechanism is the product of a compromise intended to ensure greater compliance with solidarity measures, following the staunch opposition by some member states to relocations in the New Pact negotiations and the years prior. At the same time, it raises several potential risks and side effects, especially regarding the external dimension of EU migration policy. There is a risk that the mechanism's flexibility leads to a prioritisation of financial contributions for actions in third countries targeted at returns and enhanced border management. Second, and relatedly, the reforms may be used to further shift responsibility towards partner countries. Third, the new provisions may also result in weaker protection in third countries.

Turning to the first risk, the AMMR states that cooperation should be aimed at supporting partner countries hosting large numbers of migrants and refugees in need of protection and building their operational capacities in migration, asylum and border management in full respect of human rights. Efforts to achieve these objectives would be welcome, considering the current global context marked by political instability and conflict and the prospect of further protection needs. Among others, the EU's efforts could be vital to strengthen the reception capacity and asylum systems in countries already hosting large number of refugees or facing that future possibility.

Yet, the current EU approach to cooperation with third countries shows that the EU's interest in containing migration usually trumps responsibility-sharing considerations.[37] Research indicates, for example, that member states currently have a clear preference for funding projects with a return priority under the Asylum, Migration and Integration Fund (AMIF), as opposed to those focusing on asylum or legal migration.[38] Recent migration deals and EU-funded actions, including those with Libya, Morocco, Sudan, and more recently Tunisia and Egypt, also suggest that projects may focus predominantly on enhancing third countries' border control capacity and thus physically stopping migrants from reaching EU territory.

To put this risk into perspective, it is worth highlighting that even EU-funded projects focused on legal migration mainly consist of information campaigns on the life-threatening dangers of irregular migration in an attempt to discourage departures to the EU, rather than facilitating legal migration as such.[39] It is therefore reasonable to conclude that, in the future, member states will have preferences for similar actions as part of their solidarity contributions under the newly adopted mechanism.

Moving to the second risk, even if funding were to be used to improve asylum systems and reception conditions in countries outside the EU, the New Pact reforms could lead to more responsibility-shifting to non-EU countries. The possible use of solidarity contributions under the AMMR to finance projects with a protection component in third countries should be read in conjunction with the increasingly important role of safe country clauses in border procedures. In fact, supporting asylum systems in third countries might ultimately make it easier to designate them as safe destinations in the context of national or EU-wide lists.

This suggests that, instead of facilitating responsibility-sharing in line with what the AMMR aims to achieve on paper, the new solidarity mechanism, together with the APR reforms examined in this study, could effectively lead to non-EU countries shouldering an increased burden in relation to migration flows on behalf of the EU.

Third, the flexibility provided by the AMMR together with the overall priority of reducing irregular arrivals and pressure on member states' asylum and reception systems pose the concrete risk that even as member states show greater solidarity among each other, they do so at the expense of taking into due consideration a third country's fundamental rights situation.

The failure to take fundamental rights risks into sufficient account when it comes to EU funding to third countries is well-known.[40] Notably, the European Ombudsman found maladministration on the part of the Commission for failing to adequately assess human rights risks in the context of EU Trust Fund for Africa projects in relation to surveillance activities.[41] Similarly, in the case of the EU-Tunisia deal, the Ombudsman launched investigations on the respect for fundamental rights during EU-funded border management and anti-smuggling operations due to the lack of a previous human rights assessment and periodic monitoring.[42] The Ombudsman has also expressed concerns over the lack of human rights safeguards when it comes to the more recent agreement with Egypt.[43]

If the current approach to cooperation with third countries and the financing of migration-related deals is reinforced by solidarity contributions under the AMMR, this could further foreclose access to asylum in Europe. Judicial redress would not be sufficient for intervening in the most blatant cases of violations. In fact, it would be virtually impossible to have judicial redress if prospective applicants are detected by border authorities in third countries and prevented from reaching the EU. In this increasingly common scenario, applicants would never come in contact with authorities of EU member states and, therefore, would not receive a formal readmission decision that could be challenged in court.

4. THE REFORMS' IMPLICATIONS FOR COOPERATION WITH THIRD COUNTRIES

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Based on an examination of the APR and AMMR, and considering the political emphasis placed on the external dimension of EU migration policy by virtually all member states, the expectation is that, in the next policy cycle, the EU will seek to strengthen cooperation with third countries further, including to reduce irregular arrivals and increase returns. The letter signed by 15 member states prior to the European Parliament elections calling on the European Commission to seek "new solutions to deal with irregular migration in Europe" is a meaningful indication of this trend. It confirms that some member states do not regard the reforms as sufficient and have a strong appetite for further "complementary efforts" to stem irregular migration through cooperation with partner countries.[44]

While migration cooperation will thus remain high on the EU political agenda, it will not come without challenges for the EU and third countries. On the one hand, if member states prioritise solidarity in the form of financial contributions to partner countries, and migration containment objectives come to trump responsibility-sharing, the support that some member states may need, including in the form of relocations, could remain unmet due to the flexibility embedded in the new system. This may make it harder to build trust among member states. At the same time, the increasing reliance on the external dimension could reinforce the sense that third countries will have to bear part of the costs of the EU's difficulties in attaining a fairer and more resilient asylum and reception system. This would conflict with international standards that the EU has committed to apply in its external relations, while also undermining the Union's credibility as a foreign policy actor.[45]

Connected to this, excessive reliance on external migration policy tools might come at the cost of considering internal dynamics and impacts on third countries. For example, in a global context where migration continues to be salient and politicised, readmitting rejected asylum seekers or allowing the transfer of asylum procedures to partner countries might trigger popular backlash there. Cooperation with the EU on return and readmission, in particular, is typically seen unfavourably in public debates in West Africa.[46]

Brushing aside the needs or demands of third countries is unlikely to deliver on the goal of mutually beneficial partnerships, and may also complicate pursuing other shorter-term objectives prioritised by member states. Sticking to return policy as an example, domestic politics in partner countries may, in fact, either turn cooperation with the EU and its member states into a source of societal discontent due to its unpopularity, or else discourage third countries from signing readmission agreements or implementing them.[47]

In recent years, the EU and member states have attempted to reverse their partners' lack of willingness to cooperate through financial and political incentives as well as using conditionalities. The latter comprise both positive rewards for cooperation on returns and readmission, like the provision of financial or technical assistance, and negative levers, notably the suspension or termination of the benefits of EU cooperation, to nudge partner countries into cooperation. Negative conditionalities have acquired greater relevance in EU legislation in the last years, particularly through tighter visa policies and trade restrictions.[48]

The use of all possible tools by the EU to achieve cooperation, among others on readmission, is to be expected in the next cycle, as the EU gradually prepares to implement the New Pact reforms. Yet, it is worth emphasising that the effectiveness of these levers, particularly negative conditionalities, is far from clear and has also resulted in popular backlash or threats from third countries to pull out of migration deals, thus undermining cooperation efforts in other domains.[49]

Turkey, for example, used irregular migration as a lever against Greece and the EU during the standoff at the Evros border in March 2020 despite the set of incentives contained in the EU-Turkey Statement, including financial support and visa liberalisation, among others. In addition, the EU's and member states' predominant focus on migration as an area of cooperation risks overshadowing other considerations about partner countries' stability and the Union's strategic interest. The case of migration cooperation with Libya is indicative of how concerns about managing and containing irregular migration to the EU have undermined efforts in the areas of peace, socio-political stability and state-building.

These examples suggest that the expected further trend of externalisation will not be without negative systemic consequences. The overwhelming emphasis on the need to reduce irregular arrivals and increase return rates could hamper the conclusion of more balanced and stable partnerships with benefits across the board, including to strengthen stability, good governance, and rule of law. But the need to achieve these objectives will also likely increase the EU's vulnerability and dependency vis-à-vis its partners.

More specifically, the predilection for externalisation could lead to a prioritisation of partners who are willing to engage with the EU on cooperation that includes containment objectives and, in turn, cooperation with unreliable partners with inadequate human rights standards.

In some exceptional scenarios, third countries might exploit their asymmetric advantage and the EU's dependency. For example, they may react to the EU's and member states' demands for further cooperation or to political developments outside the migration domain considered against their national interests by temporarily pulling out of migration deals or reducing border controls. In the absence of adequate countermeasures, this risks undermining the resilience of the newly reformed CEAS.[50] Underestimating the political will of partner countries to use migration cooperation with the EU on their own terms or to pursue their own foreign policy objectives might therefore backfire, particularly when dealing with autocratic or highly unstable regimes. Even if third countries genuinely cooperate with the EU, and implement their side of the deal responsibly, this asymmetry may lead to escalating financial and political demands in the future, particularly if the EU remains strongly dependent on its partners.

Not only would this be counterproductive for achieving more efficient and resilient asylum systems. This critical dependency also undermines the EU's 'strategic autonomy' and its capability to act independently and pursue its interests in strategically important domains. In the field of migration management, asymmetric dependencies on third countries combined with lack of trust and robust internal responsibility-sharing are likely to reinforce each other.

5. CONCLUSION AND FORWARD-LOOKING REFLECTIONS

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The system established by the New Pact relies heavily on the external dimension of migration policy and cooperation with third countries to achieve the reform's objectives, notably a more stable migration management system.

This strong reliance on third countries to increase return rates and strengthen border controls does not come without risks for the EU's strategic autonomy and credibility. This approach also raises serious legal and practical concerns, particularly for fundamental rights. As attention and scrutiny around the external dimension of EU migration policy is and will remain high after the New Pact, this study advances the following recommendations for EU and national policymakers keen on delivering on the longstanding commitment to equal partnerships with non-EU countries and stronger human rights safeguards.

▶ **Conduct rigorous assessments and monitoring of human rights and reception standards.** More thorough scrutiny of protection and reception standards, which should always be in line with the Refugee Convention, is essential to avoid exposing applicants to the risk of refoulement and other violations of fundamental rights. These assessments should be a precondition for the conclusion of agreements with third countries and encompass funding arrangements, both formal and informal, and the application of safe country clauses. Greater attention on fundamental rights protections within these agreements should also help to reduce systemic inefficiencies in the newly established asylum system, as the case of return cooperation shows. Where effective remedy is available, enforcing returns to third countries without appropriate human rights considerations may lead to litigation and suspended execution, rendering this approach time-consuming and costly, while also leaving applicants in limbo. Incorporating stronger human rights scrutiny as a requirement for agreements with third countries, funding arrangements and the application of safe country clause would, therefore, both contribute to addressing structural problems within the asylum system and substantially lower the risk of fundamental rights violations.

▶ **Limit or avoid the recourse to partnerships with autocratic and highly unstable regimes.** The EU's cooperation with such regimes on border control or return and readmission appears to be seen as an integral step to achieving its strategic priorities, notably the internal stability of its asylum system. However, normalising partnerships with repressive regimes for political expediency does not render their unreliability, poor human rights records, and the disproportionate leverage they acquire any less problematic. For these and other reasons, the EU and its member states should reconsider or avoid concluding partnerships with such countries, particularly when the costs for their internal stability, human rights, and the EU's credibility and strategic autonomy outweigh the expected benefits of cooperation. Instead, the EU and member states should prioritise partnerships that promote development and rule of law with positive multiplier effects for stability, human rights compliance and the EU's strategic objectives.

▶ **Ensure balanced deployment of financial support to third countries.** Contributions under the newly established EU solidarity mechanism should avoid predominantly targeting capacity-building for border control. Solidarity contributions should instead be geared towards ensuring proper and effective access to international protection, dignified reception conditions, and regular migration channels. These investments would require a substantial shift in political priorities and public debate on migration to garner sufficient support. While the current political climate and member states' agendas are unlikely to translate into such a shift at the moment, similar investments in the future would contribute to a more manageable and crisis-resilient EU asylum system, also helping to rebuild trust among member states.

▶ **Pursue balanced partnerships with third countries.** Strengthening cooperation with origin and transit countries will be key for implementing the New Pact. However, the EU's recent migration deals with Turkey, Tunisia, Egypt, and others should not be considered as blueprints or models to be replicated, but as indicators of the potential implications of establishing partnerships solely aimed at reducing migration inflows. The EU and its member states should learn from the track record of these deals to avoid incurring substantial practical, legal and reputational costs in the future. For this reason, the EU and its member states should move away from a purely transactional approach based on funding in exchange for border control and deterrence measures. Instead, the EU should ensure that matters of mutual concern, such as poverty reduction, sustainable development, education, and trade are politically prioritised, become the basis for more comprehensive cooperation, and receive appropriate funding. Moreover, efforts to set up concrete legal migration channels would also render the EU a more credible partner, bilaterally and on the global stage. While still in the early stages, the Talent Pool and the Talent Partnerships represent promising tools that should be developed and implemented further in the coming years. Relatedly, the new EU Resettlement Framework, which is set to provide safe and legal pathways for people in need of international protection, could provide the basis to expand resettlement programmes to reduce irregular arrivals, achieve greater global responsibility-sharing, and support durable solutions.

▶ **Engage with research and evidence on the drivers of migration in third countries.** The pursuit of more balanced, non-transactional, and comprehensive partnerships with third countries should rest on a solid understanding of what drives migration from these countries, including people's motivations and aspirations. The EU's cooperation efforts should also involve governmental and non-governmental actors in third countries to understand how to best engage with migration politics and governance at the local, national, and regional level to define mutually beneficial terms of cooperation, support reintegration, and offer safe pathways to those who wish or are forced to move, especially considering the persistent labour and skills shortages in the EU and the effects of climate change and environmental degradation on the drivers of migration and displacement.[51]

ENDNOTES

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Strengthening cooperation with third countries on migration management will see renewed momentum as the New Pact on Migration and Asylum reforms enter the implementation phase.

Among other objectives, the reforms aim to enable quicker decisions on the admissibility and the merit of asylum applications through safe country notions, thereby facilitating re-admissions, and reduce irregular arrivals. These objectives are consequential for the EU's and member states' relations with third countries. If containment priorities and responsibility shifting come to trump considerations about international responsibility-sharing, partner countries' interests, and human rights compliance, the reforms may ultimately hamper the EU's goal of achieving a more resilient and fairer asylum system, let alone policy objectives in other domains, especially foreign policy.

This study focuses on the implications of the New Pact reforms' implementation for cooperation with third countries. Through an analysis of the Asylum Procedures Regulation (APR) and the Asylum and Migration Management Regulation (AMMR), the study advances forward-looking reflections for more balanced and protection-oriented cooperation with third countries that can also serve the EU's broader strategic interests.