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Was 2024 historic for European migration policies?

In 2024, the EU finally equipped itself with a comprehensive legislative package on migration: the New Pact on Migration and Asylum. It happened ten years after the so-called ‘refugee crisis’ triggered a solidarity crisis among EU member states and exposed the inadequacy of the Common European Asylum System (CEAS) and, in particular, of the Dublin Regulation. The pact should streamline the CEAS and create a predictable migration management system, ensuring homogeneous procedures and standards throughout the EU, in addition to the application of a ‘solidarity mechanism’ to allow a more equitable share of responsibility – or at least of cost – among the EU member states. After the pact was finally adopted in May 2024, many European lawmakers sighed in relief, and observers called the moment ‘historic’. Migration has indeed been a contentious issue for a decade, often instrumentally used by policymakers to polarise the political debate and increase their electoral appeal. Yet, whether the adoption of the pact will indeed mark a shift in both the management of migration and the debate around it will be seen only in the next couple of years. But the first signs do not bode well.

Background and genesis of the pact

It took the European Union ten years to agree on a legislative package on migration after the unprecedented surge of irregular arrivals (over a million) at the EU borders in 2015, which put a strain on the EU asylum system.

At that time, the increase in influx – the largest since World War II, according to IOM¹ – was caused by intensified conflicts and tensions in North Africa and the Middle East. A significant number of the asylum seekers came from Syria and reached Greece through the Eastern Mediterranean route or Italy via the Central Mediterranean route. The surge caught the EU largely unprepared and exposed the main weakness of the EU asylum system. Namely, the Dublin Regulation provides for unbalanced responsibilities between

¹ “Irregular migrant, refugee arrivals in Europe top one million in 2015: IOM”. IOM UN Migration, 22 December 2015.

the countries of first entry – mostly border states, such as Greece and Italy – which are responsible for examining asylum applications, and the non-border countries. The humanitarian crisis was initially faced with an outpouring of solidarity, epitomised by the statement of the then German Chancellor Angela Merkel: “*wir schaffen das*”. This attitude, however, was quickly replaced by fatigue and intolerance.

Since 2015, the European Commission has strenuously tried to reform the inadequate EU asylum system. But to do so, it had to find an arduous compromise between the opposing interests and preferences of different EU member states, roughly divided between those that were on the front line (the Southern European border countries), those that represented the preferred destination of asylum seekers and irregular migrants (such as Germany or Sweden), and those who stubbornly refused to take their share of responsibility and allow refugees to relocate from the countries of first entry (Hungary was, together with Poland, the frontrunner of this group, even building fences on its Southern borders with Serbia and Croatia to block arrivals through the Western Balkans route).

The political debate around migration made reaching an agreement on the reform of the asylum system even more difficult, as right and far-right parties across Europe exploited the issue for their political gain, turning themselves into champions of national identities and using migrants as scapegoats for domestic problems or to divert attention from internal shortcomings. Many centre-right parties quickly followed suit, incapable of regaining control of the narrative on migration and, therefore, contributing to a surge of fear of migrants and xenophobia that reflected in electoral results in many European states.

Against this political backdrop, attempts by the European Commission in 2016 to broker an agreement on a reform of the Dublin Regulation failed. At the beginning of its mandate, the first von der Leyen Commission (2019-2024) committed to finally delivering on migration. The overall political climate, however, impacted the approach to this topic, which was increasingly treated as a security concern (that required, in particular, the strengthening of EU borders and a more control-based approach to migration management).

In September 2020, the European Commission finally presented its broad legislative proposal, which included a set of legislations introducing new instruments or reforming existing ones. The proposal triggered mixed reactions. Non-governmental organisations (NGOs) expressed deep concerns, particularly about the risks to the treatment of asylum seekers and irregular migrants and to the respect of human rights. In addition, the pact still reflected the EU's previous control-based approach to migration. Hardliners, on the other hand, considered the proposal insufficient to control and limit arrivals in Europe.

The following four years were marked by difficult negotiations, which were concluded with a final spurt in December 2023, under the Spanish presidency of the Council, when a compromise on the last, most contentious, pieces of legislation was eventually found. European legislators were under a lot of pressure to conclude negotiations before the European elections took place the following June to prove that the EU was actually

able to deliver on such difficult questions as migration.² On 10 April 2024, the European Parliament adopted the legislation with a weak majority.³ A month later, on 14 May, the Council also adopted the legislative acts that reformed the European framework for asylum and migration management.⁴ The adoption of the pact, however, was unenthusiastic and achieved only thanks to the call to political responsibility by the negotiators. In case of failure, reopening the files and searching again for a new compromise would have been politically risky. In any case, it would have been a task for the new European Parliament – to be elected in June – where the probably strengthened presence of right and far-right parties would have meant, in the best case, an even more watered-down compromise.

Following the adoption of the pact, the EU member states were given two years, starting from June 2024, to implement its provisions.

What is in the pact: The main new instruments

The new legislative framework was named ‘pact’ to reflect the fact that it was the result of complex negotiations and implied the EU member states’ mutual commitment to its respect and implementation. It comprises an extremely wide range of provisions (in total nine legislations)⁵ and thousands pages of text that are difficult to summarise or critically assess in their entirety.

In general, the pact’s goals seem to be mostly internal. Some critics have noted that, despite its ambitions, the pact does not really deal with migration management as a whole and, in fact, does not include provisions on regular migration or on instruments aimed at addressing labour market shortages.⁶ Rather – reflecting the obsession of the EU with

2 In September 2022, the European Parliament and Council agreed on a road map to conclude negotiations by February 2024.

3 The voting results of the ten legislations were as follows: Asylum Procedures Regulation 301 votes in favour, 269 against and 51 abstentions; Crisis, Instrumentality, and Force Majeure Regulation 301 in favour, 272 against and 46 abstentions; Regulation for the Management of Asylum and Migration 322 in favour, 266 against and 31 abstentions; Regulation Establishing a Border Return Procedure 329 in favour, 253 against and 40 abstentions; Regulation on Screening 366 in favour, 229 against and 26 abstentions; Regulation on the European Criminal Records Information System 414 in favour, 182 against and 29 abstentions; Regulation on Eurodac 404 in favour, 202 against and 16 abstentions; Regulation on the New Resettlement Framework with 452 in favour, 154 against and 14 abstentions; Regulation on Qualifications 340 in favour, 249 against and 34 abstentions; Directive on Reception Conditions for Applicants for International Protection 398 in favour, 162 against and 60 abstentions. Baccini, F. (2024) “The EU Parliament unenthusiastically approves Migration and Asylum Pact. PD and Fdl votes to the antipodes”. *EUnews*, 10 April.

4 Hungary and Poland voted against the entire package. The Czech Republic and Slovakia abstained in the majority of files. Austria voted against the Crisis Regulation. However, the pact could be approved by qualified majority; hence, the votes against did not compromise its adoption. Liboreiro, J. (2024). “Europe completes reform of migration rules despite Poland and Hungary voting against”. *euronews*, 14 May.

5 The nine legislations were divided into two batches. The first one was agreed upon in 2018 but not formally adopted. It comprised the Qualification Regulation, the Reception Conditions Directive, the EU Resettlement Framework and the regulation transforming the European Asylum Support Office (EASO) in the European Union Asylum Agency. The second batch of legislation comprised the Screening Regulation, the Asylum Procedure Regulation, the Asylum and Migration Management Regulation, the Crisis and Force Majeure Regulation, and Eurodac.

6 González Enriquez C. (2024) “The EU Pact on Migration and Asylum: Context, challenges and limitations”. *Real Instituto Elcano*, 28 May.

irregular migration, which constitutes only roughly 6% of the overall migration to Europe – it is mainly geared to curbing the arrival of those irregular migrants.⁷

Among the many provisions of the pact, several ‘innovations’ can be singled out.

The *Screening Regulation* and the *Asylum Procedures Regulation* aim to harmonise controls at the EU’s external borders and create “seamless migration processes and stronger governance”. The *Screening Regulation*, therefore, establishes uniform procedures to register asylum seekers and irregular migrants. It entails health and vulnerability checks, identity verification, registration of biometric data, and a security check of people intercepted after an unauthorised border crossing or those rescued at sea. The main goal of the *Screening Regulation* is to identify – in just seven days (!) – the ‘false’ asylum seekers: those trying to enter the EU irregularly not to flee violence or persecution but mostly for economic reasons. In fact, the checks under the regulation are meant to decide the destiny of these migrants: either the claim is considered admissible, and the normal asylum procedure will be applied, or it is considered unfounded or inadmissible (migrants who may pose a security threat, who have tried to mislead or deceive the national authorities, or belong to a nationality with a recognition rate below 20%), and those concerned will be treated according to a new accelerated border procedure; the aim is to dismiss the invalid claim within 12 weeks, using a ‘legal fiction of non-entry’, that is, the claimants are considered as not having set foot on European soil.⁸ At the end, when the request for asylum is denied, the candidates – who, according to the non-entry fiction, have never legally entered the EU – can be ordered to leave, avoiding the usual lengthy procedures.

NGOs have highlighted how the provisions of the pact may strongly undermine migrants’ rights. Firstly, accelerated procedures risk being hasty and based not on the asylum seeker’s individual story but on geographical considerations; they can also lead to an increase in expulsion in violation of the principle of *non-refoulement*. Secondly, the pact fails to acknowledge that motivations to migrate are blurred and cannot always be ascribed to a single cause. Thirdly, the legal fiction of non-entry lowers people’s access to legal support (even if legal counselling will be provided), increases the risk of detention and degrading treatment, and compromises the integration process.⁹ Last, but not least, there are risks of racial profiling at EU borders and of the digital surveillance of migrants.¹⁰

Another novelty in the system is introduced by the *Asylum and Migration Management Regulation* (AMMR),¹¹ which provides for the creation of an ‘annual migration management

7 Maunganidze, O. A. (2024) “Migration: It is time for a paradigm shift!”. *The Progressive Post*, 26: 52-54.

8 For a thorough analysis of the *Screening Regulation* and the border procedure, see: Tsourdi, E. (2024) “The new screening and border procedures: Towards a seamless migration process?” Policy study. Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, Brussels, June.

9 “Requiem per il diritto di asilo in Europa. Con il patto si smantella un diritto fondamentale”. ASGI, 11 April 2024.

10 “The EU Migration Pact: A dangerous regime of migrant surveillance”. PICUM, 11 April 2024.

11 For a broader understanding of the AMMR, see: De Bruycker, P. (2024) “The new European solidarity mechanism: Towards a fair sharing of responsibility between member states?” Policy study. Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, Brussels, September.

cycle', which will be used to determine whether member states find themselves under pressure due to a significant increase in arrivals. While the new system assigns a strengthened role to the European Commission and responds to the need to devise mechanisms to prevent emergencies, it does not move away from the spirit of the Dublin Regulation. The criterion of the country of first entry is, in fact, maintained, leaving the main responsibilities related to border control and asylum procedures to the member states located at the border. To make up for the Dublin system's dysfunctionality, though, the AMMR creates a new flexible solidarity mechanism under which member states must contribute to the system in three ways: relocation, financial contributions or in-kind contributions.¹²

The lack of solidarity among member states has been the most contentious issue of the last decade. And the fact that the European legislator has not been able to fully repeal the Dublin Regulation is due to the opposition of those member states who reject the very idea of solidarity. Hence, it remains to be seen whether the mandatory flexible solidarity introduced with the pact will be able to overcome the reluctance of some member states to contribute to the system, or if the political tensions that have prevented the adoption of other voluntary forms of solidarity in the past will persist. Also, in general, it is still unclear whether the mechanisms provided will be sufficient to support those member states that find themselves under migratory pressure. In essence, the regulation has not managed to find an equitable balance between responsibility and solidarity, which makes its success uncertain.

In light of the 2015 experience and to overcome the perpetual emergency mode that has characterised the European approach to migration since then, European legislators have decided to introduce a brand-new instrument that should allow the EU member states to derogate from the Asylum Procedure Regulation if exceptional circumstances arise. This new instrument is outlined in the *Crisis and Force Majeure Regulation*, which establishes a set of rules to define if and when a member state faces a crisis (such as a situation of mass arrival, to be also defined in proportion to the size, population and capacity of the respective member state). The regulation also considers the case of 'instrumentalisation' which can emerge when a third country or another non-state actor tries to destabilise an EU member state or achieve economic or political goals by using migrants' movements across the EU's external borders as a means of coercion, as did Belarus in 2021-2022.¹³

While this regulation responds to the actual need to prepare the Union and its member states for the possible emergence of exceptional situations, the definitions that are used remain ambiguous, and its provisions still present uncertainties that risk impacting the application of the rules. Also, many observers point to the fact that member states may try

12 Member states can receive an annual quota of asylum seekers, pay €20,000 for each non-admitted asylum seeker or spend this same amount on migration projects.

13 For an analysis of the regulation and its implementation, see: Neidhardt, A. H. (2024) "The Crisis and Force Majeure Regulation: Towards future-proof crisis management and responses?" Policy study, Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, Brussels, June.

to abuse its application to derogate for longer periods from the EU's common rules, leading to uncertainty in the application of the EU rules.

What is next?

The New Pact was approved after years of EU member states' erratic migration policies, and it was the result of long and troubled negotiations. Obviously, trying to question it again would mean opening Pandora's box. Yet, while the pact was presented as the panacea that would 'solve migration', the truth is far from it. The EU member states have two years to implement it, which means that it will only really enter into force in 2026. And many things can happen in the meantime. Besides, from the very moment of its approval, some countries have shown signs of aversion to rules that they contributed to establish but consider too soft. Already in September, the Netherlands submitted a request to the European Commission to obtain an (improbable) opt-out clause from the pact.¹⁴ Other member states seem to be moving randomly. Germany has re-introduced controls at Schengen borders.¹⁵ Poland has asked for and obtained the right to suspend asylum rights temporarily.¹⁶ And Italy is trying to push for even more restrictive measures, while trying to operationalise the contested Memorandum of Understanding with Albania, which provides for extraterritorial migration and asylum management (including detention and asylum processing) in Albania, and seems to conflict with European regulation, particularly concerning the protection of the fundamental rights of the individual.

Against this concerning background, with EU member states' attempts to undo what they have agreed upon, and despite the pact's many shortcomings, even strong opponents of the new legislation are now convinced that the application of the law and the strict enforcement of the pact's provisions are the only viable way forward.¹⁷ Certainly, persisting imbalances will need to be corrected. But the Commission will have to monitor the correct implementation of the new regulations, while resisting the pressures by those member states that will try – one way or another – to obtain derogation or go their own way. At the end of the day, the most relevant innovation of the pact is the attempt to define a comprehensive set of rules that are meant to offer certainty to member states and migrants. What is certain, however, is that, despite the promises, migration will remain a contentious issue in Europe for the years to come.

14 Liboreiro, J. (2024) "Netherlands requests opt-out clause from EU asylum rules, a bold move with low chances of success". *euronews*, 18 September.

15 Riegert, B. (2024) "Germany begins expanded border controls to control migration". *DW*, 16 September.

16 "EU says asylum rights can be suspended for migrants 'weaponized' by Russia and Belarus". *AP News*, 11 December 2024.

17 Wollard, C. (2024) "Irony overload: Turning against the Pact". Editorial. *ECRE*, 10 October.