

The New European Pact on Migration and Asylum

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Migration and asylum policy has long been a central element of the European political agenda, both in the EU and in its member states. In the final months of the last legislative period, the Union agreed on the New Pact on Migration and Asylum, which creates a new European framework for this issue.

- ▶ In any case, the management of migration phenomena remains extremely complex, which should prompt individual Member States to avoid isolated initiatives that risk making the problem even more difficult for Europe as a whole and failing to find adequate solutions.
- ▶ For its part, the EU should use the Pact as a basis for building an efficient and sustainable migration management mechanism, while respecting legal obligations in this area.
- ▶ The following text summarises the most important elements of the pact, which introduces some new elements but also leaves some questions unanswered to which the European and national institutions will have to provide answers in the near future.

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1 Timetable and purpose of the pact

On 20 December 2023, the Council and the European Parliament reached an agreement on the five pillars of the "Pact on Migration", the legislative package to amend the European Union's migration policy. The agreement was ratified by the European Parliament on 10 April 2024 and adopted by the EU Council on the following 14 May.

The European Commission presented the package in September 2020 with the aim of fundamentally reforming European migration policy, both in terms of its internal aspects (processing asylum applications from migrants who have entered the EU irregularly, pressure on member states to cooperate with each other) and its external aspects (strategies and agreements with African and Asian countries to reduce migration flows to the EU).

The regulatory package concerns all phases of asylum and migration management: screening of irregular migrants on arrival in the EU, collection of biometric data, procedures for submitting and processing asylum applications, determination of the Member State responsible for processing an asylum application, but also cooperation and solidarity between Member States and regulation of crisis situations, including cases of instrumentalisation of migration flows against EU countries.

2 The most important innovations of the new EU pact on migration and asylum

2.1 Screening regulation

It provides for foreigners to be checked on entry at the Union's external borders in order to collect information on their nationality, age, fingerprints and facial image. The result of the entry check, which may last a maximum of seven days, determines which procedure is applied to the migrant: Rejection at the border, rejection outside the border or recognition as a person entitled to asylum.

The pact changes the asylum application procedure, introduces two possible procedures and aims to speed up deportation: the traditional procedure (which usually takes several months) or the accelerated procedure (which is carried out at the EU's external border and lasts a maximum of 12 weeks, during which migrants must remain in detention centres).

In addition, the screening system can also be applied to persons who are apprehended within EU territory, who have evaded initial checks at the external borders, who have been brought ashore during search and rescue operations at sea or who apply for international protection at border controls even though they do not fulfil the conditions for entry into the EU.

In this phase, the Member States use the new independent monitoring mechanism to monitor and ensure compliance with fundamental rights throughout the screening process. The monitoring mechanism monitors compliance with the international principle of non-refoulement in accordance with Article 33 of the Geneva Refugee Convention, which prohibits the refoulement - and generally any form of forced transfer - of asylum seekers to their country of origin if they are at risk of persecution, torture, the death penalty or inhuman or degrading treatment.

2.2 Asylum Procedure Ordinance

It regulates the procedure for making asylum applications in the EU and the criteria for distinguishing between migrants who are subject to the traditional procedure and those who are subject to an "accelerated" border procedure. This so-called "border procedure" is only applied to migrants who: provide false information to the authorities; are classified as a security risk; come from countries whose nationals are generally not granted asylum, i.e. the recognition rate is below 20%. The aim of the regulation is to establish a common procedure for all EU member states for the examination and possible granting of international protection. Asylum applications can be examined within shorter deadlines, whereby an initial decision must be made within a maximum of six months. However, compliance with these deadlines will depend on the resources available and the efficiency of the authorities responsible for examining asylum applications in the individual Member States.

The new legal framework sets the EU's adequate reception capacity at 30,000 persons, calculated on the basis of the ratio between the number of irregular arrivals and the number of rejected asylum applications over a three-year period.

In addition, removal measures should limit the possibility of asylum applications for people coming from countries categorised as 'safe' under a 2013 EU directive and speed up the return of migrants to the third countries categorised as 'safe' from which they most frequently leave for Europe, i.e. Tunisia, Libya and Turkey. It should be noted that the 27 Member States often apply different criteria for categorising third countries, so that some countries may be classified as "safe" by one Member State and "unsafe" by another.

2.3 Ordinance on the Administration of Asylum and Migration

It determines which member state is responsible for an asylum application. Although the new regulation replaces the Dublin Regulation, it does not change the core principle of the Dublin Regulation: asylum seekers can only apply for asylum in the EU country in which they first entered or in which they are legally resident. However, there will be more exceptions to the new regulation, such as family reunification, language skills or the acquisition of a qualification in a country that enables an applicant to apply for a job in that country. The country of first entry will be responsible for an asylum application for 20 months, and 12 months for people rescued from distress at sea.

The new solidarity mechanism introduced by the Regulation is intended to combine binding solidarity with the flexibility given to Member States to choose their individual contributions and to allow Member States other than the country of arrival to choose between different ways of participating in the asylum burden-sharing scheme: Relocation of migrants to their own territory, payment of a financial contribution to the country of arrival or recourse to alternative solidarity measures.

600 million euros are available each year from the so-called solidarity pool, which benefits the states that are exposed to the greatest migratory pressure. The other states can choose to resettle migrants on their territory or pay a contribution of 20,000 euros for each migrant who should be resettled on their territory. Each country's share of resettlement and/or funding will be calculated on the basis of its population and gross domestic product. Countries that refuse to take in asylum seekers or pay contributions will face infringement proceedings.

The funds will not only be redistributed between the border states most exposed to migration flows, but can also be used to finance measures in countries that "have a direct impact on migration flows to the EU", i.e. countries such as Libya and Tunisia, from which migrants enter Europe. However, the functioning of the solidarity system depends on the reliability and legitimacy of the institutions in these countries, which is not always given, and this could become a weak point in the application of the new Asylum and Migration Regulation.

2.4 Crisis regulation

It takes into account the number of migrants entering the EU irregularly and provides that derogations only apply in the event of a massive and sudden influx of migrants or in special situations, such as a Covid-19 pandemic. In these circumstances, a country applies to the Commission to activate the crisis situation, and if the request is granted, national authorities can apply stricter rules, including longer deadlines for asylum procedures: up to ten days for the registration of applicants and six weeks longer for the "border procedure". This procedure also applies to people who come from a country where the recognition rate is less than 50 per cent.

Here too, other EU Member States can contribute to alleviating the crisis situation in three ways: by relocating a certain number of asylum seekers to their own territory, by making a financial contribution or by financing reception resources and procedures in the country under migratory pressure. In any case, even if exceptions to the standard procedures are justified, respect for the human rights of asylum seekers must remain fully guaranteed.

2.5 Eurodac Regulation

Eurodac Regulation: This is a system for comparing the fingerprints of asylum seekers and certain categories of illegal immigrants. The data of persons entering the EU irregularly, including fingerprints and facial images from the age of six, will be stored in the new electronic database. The data of those who enter the EU irregularly, including fingerprints and facial images from the age of six, will be stored in the new electronic database. In addition, the authorities can register migrants who could pose a security risk, are violent or armed. The aim of the measure is to obtain a complete and truthful picture of migrants arriving in EU member states.

3 Decisions of the European Parliament of 10 April 2024

On 10 April 2024, the European Parliament adopted ten legislative texts on the reform of European migration and asylum policy, including the above-mentioned regulations. In the same session, the legislative text on the reception of asylum seekers was also adopted, according to which the member states must guarantee equivalent reception standards for asylum seekers, e.g. in terms of accommodation, schooling and healthcare. In addition, registered asylum seekers may take up work no later than six months after submitting their application. Member states have two years to transpose the measures required by the Reception Conditions Directive into national law.

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