



The EU's New Pact on Migration and Asylum: Towards a Long-Term Sustainable European Migration Policy?

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The phenomenon of human migration has had a profound and far-reaching impact on the evolution of European history, contributing to the way cultural, economic, and social structures have formed and developed on the continent. Currently, however, the way member states of the European Union (EU) have responded to, especially, displaced people turning up at their borders has become highly contested among the countries of the EU, with the potential to significantly undermine the stability of the union. Overall, migration is certain to show up on the top of any list of highly controversial political topics today, just about everywhere in the EU. In political practice, it remains deeply marked by a difficult-to-manage imperative shaping official responses to it, that of striking the right balance between, on the one hand, the decision-making power of the Union itself as a political body and, on the other hand, the

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autonomy of its member states in matters of migration and asylum policy (Boswell & Geddes, 2011; Guiraudon, 2017; Niemann & Zaun, 2018). To respond to this challenge, in 1999, the Common European Asylum System (CEAS) was introduced to provide the primary framework for co-operation among the Union countries on migration. Notwithstanding its possible merits elsewhere, it has, however, been widely criticized for its perceived inhumanity, ineffectiveness, and unfairness in practice (Parusel, 2015; Scipioni, 2018).

In 2015, the European asylum system was subjected to a particularly severe test. The early months of the year saw a series of lethal maritime disasters involving migrants crossing the Mediterranean Sea. A total of 3692 migrants perished due to drowning (International Organization, 2015). All the deaths and the travails of the journey, however, had little effect on the influx of refugees arriving on Europe's shores in increasingly large numbers. The Union's capacity to respond became strained, leading to a commonly recognized general 'crisis'. The number of refugees and migrants reaching Europe kept going up exponentially, with the majority of irregular migration taking place along the central and eastern Mediterranean routes. That year alone, a total of 810,000 migrants and refugees crossed into Greece by sea, with an additional 5000 arriving by land (International Organization, 2015). Overwhelmed by the massive scale of the problem, EU member states on the frontline began to disregard the CEAS Dublin principle of first country of entry, enabling migrants to proceed to their preferred destinations, primarily Germany and Sweden. The perception spread that the Union's migration system had become inadequate, and there was a discernible shift towards a more negative attitude toward migration and migrants in its member states (Agustín & Jørgensen, 2019).

In light of this *de facto* relinquishment of a pivotal tenet of the common EU asylum policy, Germany declared its intention to also officially suspend the Dublin Regulation, albeit on the part of refugees originating from Syria only (Niemann & Blöser, 2021). As the discrepancy between the legal EU asylum regime and the actual practice of its member states widened, the EU initiated a series of policy reforms aimed at addressing the issue. In May and September 2015, the European Commission put forth a series of proposals, collectively titled the European Agenda on Migration. The agenda included the establishment of a common list of 'safe countries of origin', the implementation of a more efficient EU return policy, and the formulation of strategies to address

the underlying causes of migration in Africa such as conflicts driving people to flee their homes (European Commission, 2015a). In 2020, the Commission, finally, initiated what it termed the European Union Pact on Migration and Asylum (hereafter the Pact), aimed at establishing a comprehensive framework for managing migration and asylum across the Union (European Commission, 2020). The Pact was adopted by the European Parliament in April 2024 and, formally, by the Council of the EU in May 2024.

Bringing with it a new mechanism for robust control of the Union's external border, a shared screening procedure for asylum seekers, a border procedure for rapid asylum determination, an increased emphasis on returns, and new partnerships with third countries, the Pact stressed the notion of mutual assistance among EU member states as its central, all-pervasive theme. According to it, each member state was now to be responsible for a designated proportion of the total number of asylum seekers, calculated based on economic, geographic, and historical criteria. In the event that a country refused to accept refugees, it would be required to pay a sum of approximately 250,000 euros per asylum seeker to the European Union. This payment is intended to support the countries that are taking on a larger share of asylum seekers and to ensure a fair distribution of responsibilities across the member states. The calculation of the payment per refugee is based on the number of asylum seekers that a country is supposed to accept according to the EU's distribution mechanism, rather than the exact number of refugees turned back. This mechanism considers various factors such as the country's population size, GDP, and past numbers of asylum seekers received.

It is this complex historical trajectory towards a unified asylum and migration policy that this chapter examines in more detail, assessing the extent to which the new Pact on Migration and Asylum can be said to succeed or not in addressing the fundamental challenges inherent in the common EU-wide migration policy. Ultimately, the question is of the extent to which a supranational entity like the EU might have the prerequisites and basic capabilities to devise and implement a coherent and sustainable common migration policy, and of what sort of challenges may need to be overcome to meet that goal. In our world where conflicts, war, and climate change increasingly render societies uninhabitable, forcing people to leave their homes and seek refuge elsewhere, the need for a well-functioning and well-managed all-European migration system has grown more pressing than ever. To better contextualize the question tackled, in

what follows I first outline the different phases of what can be identified as an EU-wide effort over several decades to create a unified policy on migration and asylum. After that, the chapter examines more in detail the EU's response to the 2015 refugee crisis, assessing its implications for any further harmonization of asylum and migration policy within the Union. The chapter concludes with a discussion of the research findings, followed by a prognosis of possible scenarios of what may happen next best to bring forth any sustainable common asylum and migration policy.

THE EVOLUTION OF THE EUROPEAN LEGAL FRAMEWORK AND COMPETENCES IN THE AREA OF MIGRATION

Migration policy is a matter of high politics, with a strong connection to national sovereignty and the notion of nationhood (Geddes, 2003). The evolution of the European migration policy has taken place closely connected to the expansion of European integration, becoming, first, an integral component of the Justice and Home Affairs co-operation established by the Treaty of Maastricht in 1992. Soon thereafter, in the 1997 Treaty of Amsterdam, it was incorporated into the Area of Freedom, Security, and Justice, which addresses a range of cross-border issues, including the free movement of citizens, the safeguarding of fundamental rights, the combating of terrorism and organized crime, and matters pertaining to asylum and immigration. In order for a Europe without internal borders to function effectively and for the EU to have a unified external border, it is essential that the member states reach a consensus on a common policy regarding the admission of individuals into the Union, along with the rights and freedoms afforded to non-member-state nationals. The evolution of EU asylum and migration policy has thus been gradual, and it has become harmonized through a regulatory framework (Boswell & Geddes, 2011).

Over the past decades, the *acquis* in the area has grown, with the freedom of the member states to regulate their own migration policy becoming curtailed. The first concrete attempt to develop a common European migration policy was, however, already in 1985, when the Council of Ministers, following a proposal from the European Commission, adopted the document *Guidelines for a Community Policy on Migration* (Bulletin of the European Communities, 1985). Centring on the principle of free movement of European Union citizens, goods,

services, and capital, it also established common guidelines on living and working conditions for all migrants, including those from third countries.

The 1990 Dublin Convention, which delineates the responsibilities of the EU member states in examining asylum cases, constituted an important step forward in the development of a common EU migration policy. Two of the Convention's principal aims were to prevent the practice of asylum shopping, whereby asylum seekers submit applications in multiple member states, and deter unauthorized entry into the Union (Geddes, 2003). Moreover, it established criteria for determining which member state was responsible for examining an asylum application within the Union, with a view to avoiding parallel asylum processes. Established concurrently with the inception of the Schengen co-operation, the system has, however, subsequently been modified and reformed a number of times. In 2003, the Convention was incorporated into EU law as the Dublin II Regulation, which, furthermore, introduced Eurodac, a Union-wide database set up to collect rejected asylum claims and the fingerprints of asylum seekers. Its purpose was to help establish the identity of asylum seekers in order to ascertain whether they had previously applied for asylum in another EU member state: in keeping with the Dublin II Regulation's first country of asylum principle, asylum seekers who had previously applied for asylum in another EU member state were to be referred back to that country. The current form of the convention, adopted in 2013 as the Dublin III Regulation, places a greater emphasis on humanitarian considerations, such as the asylum seekers' right to family life and the rights of unaccompanied minors. From early on, however, the Dublin Convention was designed primarily with security-oriented considerations in mind, having the principal objective of curbing undocumented migration (Geddes, 2003, p. 134). As several scholars have argued, from the 1990s onwards there had been an increasing perception among European citizens and governments that asylum seekers were a burden on resources and constituted a threat to national security (Geddes, 2003). This led to the characterization of many asylum seekers as 'false refugees' or 'disguised economic migrants' (Martiniello, 2006, p. 304).

In 2004, the EU introduced the European Border Surveillance System (EUROSUR) which was to assume central operational responsibility for the co-ordination of the Union's external borders. Since 2016, it has been formally designated as the European Border and Coast Guard Agency Frontex (see, e.g., Pettersson Fürst, 2024). Following the evolving migration trends and the surge in asylum requests to EU member states since

then, its mandate has been gradually expanded and its budget increased. Commencing its operations with an initial annual budget of euro 6 million in 2005, by 2016 its budget had grown to euro 142 million, and by 2023 to euro 845 million. The EU frequently presents Frontex's work as a solution to both humanitarian and security crises.

TOWARDS A COMMON ASYLUM POLICY

The large-scale forced displacement in Europe resulting from the armed conflicts in the Western Balkans, particularly Bosnia and Herzegovina, prompted the German government in 1994 to propose a model for a solidarity-based sharing of the asylum burden (Hatton, 2005). At the time, Germany was processing more than half of all the asylum applications submitted to EU member states. In the proposed model, asylum seekers were to be distributed among the member states according to a distribution key comprising three criteria, each of which was assigned equal weight: the size of the member state's population, territory, and gross domestic product. Faced with staunch opposition, especially from the United Kingdom, the proposal nonetheless failed to garner the requisite support. Yet, efforts to harmonize migration and asylum policies within the EU continued.

Indeed, the early 1990s' rapid increase in asylum seekers only led to a further intensification of efforts to harmonize EU asylum policies (Geddes, 2003). In research literature, the subsequent evolution of the EU asylum and migration policy is often attributed to the phenomenon of 'venue shopping' (e.g., Kaunert & Léonard, 2012), or the propensity of politicians to transfer decision-making on a specific issue to another political domain in order to circumvent opposition at the national level. Such political processes have been identified in the field of migration and asylum policy, too, where member states not infrequently seek to extend their competencies with the intention of overpowering or eluding legal and political constraints on their freedom of action in it (e.g., Guiraudon, 2000; Spehar, 2012). This has enabled them to promote more restrictive measures without having to engage with, and win over, national courts, the media, and non-governmental organizations.

One reason behind EU policymakers' efforts to achieve policy harmonization within the Union has been their desire to achieve a fairer distribution of the asylum burden among the member states and prevent

any drift towards the lowest common denominator in protection standards. Altogether, the European migration policy regime can be said to have undergone four significant developments following the 1997 adoption of the Amsterdam Treaty (see, e.g., Geddes, 2003). Firstly, the migration policy agenda has widened substantially. Secondly, there has been an increasing emphasis among the EU policymakers on joint international action. Thirdly, the protection of external borders has become a priority. Finally, the responsibilities of the various actors involved in the area have become more clearly defined in relation to immigration policy.

The most comprehensive policy package for EU asylum policy in the 1990s was adopted at the Tampere European Council, in the so-called Tampere Agreement of 1999. Indeed, the subsequent period is regarded as pivotal in elucidating the current EU asylum policy. The agreement saw EU ministers reaffirm their commitment to the Refugee Convention, which was meant to inform the development of common EU asylum policies. Furthermore, the principle of non-refoulement was recognized as a fundamental tenet in this context (Hatton, 2005). Importantly, moreover, also the European Commission acknowledged the importance of the Amsterdam Treaty and the Tampere Agreement Programme, describing them as pivotal moments in the EU's collective approach to immigration and asylum matters (European Commission, 2003). At the Tampere European Council, it was agreed that the Union was in need of a comprehensive approach to migration, one that would address political, human rights, and development issues in the countries of origin and during the transition. One of the main means to achieve this was partnerships formed with countries of origin, to combat poverty, improve living conditions, increase job opportunities, prevent conflicts, and consolidate democracy in the states in question.

Following the Tampere Agreement, a series of directives was adopted within the framework of the Common European Asylum System (CEAS). Between 1999 and 2005, six legislative instruments establishing *minimum* standards for asylum were adopted: the Eurodac Regulation, the Temporary Protection Directive, the Reception of Asylum Seekers Directive, the Dublin Regulation replacing the 1990 Dublin Convention, the Qualification Directive, and the Asylum Procedures Directive. The directives here addressed a number of key areas, including the reception of asylum seekers, asylum procedures, grounds for protection, mass displacement, and return. While, as directives, they constitute a form of framework legislation based on principles common to all EU member

states, the manner in which the objectives set in them are achieved is left to the discretion of each member state. Furthermore, in this domain, the focus was on establishing fundamental minimum standards; consequently, member states were left at liberty to adopt more generous policies if they so desired.

MANAGING LABOUR MIGRATION

While discussions on the challenges and solutions related to asylum and refugee issues have dominated debates and policy-making within the EU and its member states, labour migration has also been an important area for the Union to address collectively (Boswell & Geddes, 2011). Since the 1950s, it has pursued a migration policy whose principal objective has been to facilitate economic growth through the promotion of mobility between member states. The European Commission has, furthermore, frequently asserted the Union's need for labour migration from third countries to ensure the availability of skills and enhance competitiveness in sectors experiencing a dearth of workers with suitable qualifications. In several member states, labour migration has been identified as a crucial component of any strategies addressing the challenges posed by negative demographic trends so as to sustain future growth and prosperity. In line with this, in 2005 the European Commission presented a document entitled *Communication on a Policy Plan on Legal Migration*, setting forth its intention to implement legislative measures to develop non-bureaucratic, flexible approaches ensuring fair, rights-based treatment for all labour migrants. This way, it was believed, conditions attractive to special categories of migrants in demand in the EU could be created.

The proposed measures comprised a framework directive delineating the rights of individuals arriving in the Union through regulated labour migration. There were also four more specific directives governing the conditions of entry and residence for highly skilled workers, seasonal workers, intra-corporate transferees, staff, and remunerated trainees. In May 2009, the EU adopted a directive on a single work and residence permit, known as the 'Blue Card', which enabled non-EU workers to seek employment within the Union (Council Directive, 2009). With it, the EU sought to compete with the United States, Canada, and Australia for highly skilled migrant labour. The blue card was geared for workers from outside the EU, not least Indian IT experts and engineers. To demonstrate the higher vocational qualification expected of the applicants,

they were required to have at least three years of professional experience in their field and be supported by an employer in the country where they wanted to find a job already when submitting their application. The number of Blue Cards issued by each individual EU country was left to its own discretion. To date, however, only Germany has gone on to issue them in any significant numbers. This may be attributable to the fact that German national legislation has to a large extent been aligned with EU regulations pertaining to Blue Cards (Eurostat, 2024).

UNFINISHED HARMONIZATION OF EU MIGRATION POLICY

The overarching objective of the Common European Asylum System of 1999 was to reform the existing system in three major ways, by bringing about a uniform standard of reception for asylum seekers, a consistent approach to the processing of asylum applications, and a fair and equitable distribution of responsibility among participating countries. The establishment of such a more level playing field would enhance the legal security, efficiency, and promotion of co-operation on migration and asylum within the Union, benefiting asylum seekers and asylum systems alike. Contrasting with the express CEAS objectives and the self-understanding of its creators, many political actors and representatives of human rights organizations have, however, denounced the EU migration policy as unlawful and inhumane (Cabot, 2018; Doctors Without Borders, 2018), criticizing the system built by the EU as a *de facto* 'Fortress Europe'. According to the critics, the implementation of strict visa policies and increased border controls made it only more challenging for individuals to enter the EU legally to seek asylum or employment. Moreover, as extensive research in the area has demonstrated, EU member states have experienced significant difficulties in implementing the CEAS in accordance with its provisions (e.g., Lavenex, 2001; Maurer & Parkes, 2007). Yet, the efforts to harmonize the EU member states' diverse asylum policies have also been successful in some respects, such as in improving the reception conditions for asylum seekers in countries where they previously were inadequate and where the reception systems had been poorly designed (Zaun, 2015). This has been particularly true of some new member states in Eastern Europe that subsequently have been obligated to act on the quality and efficiency of their systems and practices.

Elsewhere, however, the process of harmonization has had an opposite effect. This has resulted in a convergence towards a minimum standard, resulting in many places in a less generous reception system (Thielemann & El-Enany, 2011). The effect is known as ‘regressive harmonization’. Relevantly here, Thielemann (2003) has put forth the argument that EU countries today are engaged in a competitive process, striving to present themselves as inhospitable to asylum seekers. The question is of a kind of ‘race to the bottom’, defined by the implementation of increasingly strict rules and provision of inadequate reception conditions for asylum seekers. Despite EU-level harmonization ambitions, reception conditions for asylum seekers still vary significantly from one country to another (see, e.g., European Migration Network, 2014), leading critics to describe the conditions for asylum seekers in some EU member states as incompatible with human dignity and the treatment of applicants as inhuman or degrading.

The EU is thus facing notable challenges in its efforts to develop and implement a more humane and fair migration policy. These challenges can be attributed to two main factors: the continued inadequacy of EU legislation addressing various forms of migration, and the lack of solidarity among member states. The Dublin system has not only failed to take into account the principle of equal reception but has actively worked against it. Insofar as the country responsible for examining an asylum application is the first member state in which the asylum seeker is registered, it remains inevitable that the member states at the external borders of the EU receive a disproportionate share of asylum applications. In 2020, approximately 80 per cent of all initial asylum applications were submitted in Greece, Italy, and Spain. The imbalance overwhelms national systems and leads to undignified conditions for asylum seekers, marked by overcrowding in refugee camps such as on Greek islands and express deportations at the EU’s borders, in violation of all international law.

The process of Europeanization, however, has had a significant impact not only on the development of policies related to migration; it has also affected the discourse surrounding migrants, and migration more broadly. As a number of studies have shown, the migration discourse in the EU has been notably focused on preventing migration from third countries in the interest of internal security concerns within the Union (e.g., Penninx, 2013). Terrorist incidents in several member states over the past two decades, along with the ensuing campaigns against terrorism, have played a major role in the formation and rise to dominance of this negative

view on migration (see Boswell, 2003). Opportunistic political parties, for their part, have been quick to mobilize claims about migrants' inability to integrate lack of that would then explain the various social challenges encountered.

According to Karageorgiou and Noll (2022), the EU's immigration and asylum policy as we see it today can ultimately be understood as not much more than a protectionist regime based on the control needs of the nation-state—a rather damning indictment of a system whose self-understanding is just the opposite, centred on supranational ambitions, commitment to expanding civic freedoms including freedom of movement, and the formation of post-national political identities. This system, moreover, was already in place at the time of the Union's inception in the 1950s. The ineffectual regulations governing migration and asylum ever since can thus be viewed as manifestations of nation-state protectionism, which, paradoxically, was then only fortified during the 2015 crisis year.

EU'S INABILITY TO MANAGE THE 2015 REFUGEE CRISIS

In the summer of 2015, the European Commission claimed the Union to be confronted with the most serious and largest refugee crisis since the Second World War. The crisis, also referred to as the migration crisis, reached its zenith in Europe in the latter half of the year, when the largest numbers of migrants attempted to gain entry to the continent in order to seek asylum (Falkner, 2016). In the EU alone, 1.3 million asylum applications were registered, with the majority of the asylum seekers trying to reach Europe traversing the Mediterranean Sea from Syria and Afghanistan (European Commission, 2015b). The crisis revealed two major defects in the EU's asylum system. Most immediately, it became evident that a limited number of countries bore the burden of receiving and processing the majority of asylum seekers. Soon after, it was noted that asylum seekers were not treated equitably across all EU countries, leading to notable variations in where they sought asylum (Parusel, 2015).

The late summer of 2015 appeared to present a favourable opportunity for refugees to travel to Europe. At a press conference in Berlin on 31 August, German Chancellor Angela Merkel asserted her country to be capable of accommodating even a large influx of new refugees. As she herself put it (in German), 'Wir schaffen das' (We can do it; Bundesregierung, 2015, para. 27). At the same time, Merkel urged also

other countries to assume a greater share of responsibility for the distribution of refugees from war zones such as Syria. Her plea, however, was heeded by only a few countries. Among them was Sweden whose prime minister Stefan Löfven appealed to his people's sense of solidarity with refugees, describing the situation of those fleeing across the oceans as analogous to that of the Estonians in the 1940s, South Americans in the 1970s, and the refugees from the Balkans in the 1990s (Aftonbladet, 2015).

What the 2015 refugee crisis finally demonstrated was how inadequate the Dublin III Regulation was as an instrument with which to address situations such as the one now on hand. Not only was it revealed to have inherent deficiencies making it even formally unsuitable for its purpose, however; there also turned out to be a multitude of issues marring its implementation. One significant shortcoming of it was that it was an administrative instrument for determining which member state was to have the responsibility for processing the asylum application, rather than a mechanism for apportioning responsibility among them for offering refugees international protection.

In general, the refugee crisis gave rise to significant disagreements among member states, most immediately about where the asylum seekers were to be settled within the Union. Since the peaking of the refugee crisis in the autumn of 2015, EU heads of state or government have consequently convened numerous times, for both regular and extraordinary meetings, attempting to reach an agreement on how to approach the pressing questions of refugees and migration. All the same, the disagreements have persisted, in fact only intensifying. During the summer and autumn of 2015, the European Commission set about to attempt a more uniform distribution of asylum seekers across the member states. A preliminary proposal was presented in May, in which the Commission outlined its plan for the EU as a whole to receive 20,000 quota refugees (Council of the European Union, 2015). In addition, up to 120,000 asylum seekers currently in Greece and Italy, which up to then had received a disproportionately high number of refugees, would be relocated to other member states. The proposal was met with strong opposition from several member states. A number of countries, among them Austria, the Czech Republic, and Slovakia, had thus far accepted only a relatively small proportion of their assigned quotas, while Poland and Hungary had not received any asylum seekers at all (European Commission, 2017). In December 2017, the Commission therefore initiated legal proceedings

against Poland, Hungary, and the Czech Republic before the European Court of Justice (ECJ), accusing these countries of failing to accept their share of refugees to be redistributed from Italy and Greece. In April 2020, the ECJ ruled that the three states had violated EU law by refusing to accept refugees as jointly decided upon by EU member states (Carrera & Geddes, 2021).

The lack of solidarity and responsibility sharing among member states resulted in the suspension of the first country of asylum rule. Instead, refugees began to be directed to countries with more accommodating reception policies, such as Germany and Sweden. In 2014, 72 per cent of all asylum applications in the Union were submitted in no more than five member states (European Commission, 2015b, p. 13); approximately one-third of them were in Germany. The countries after it with the largest number of asylum applications received were Sweden, Italy, France, and Hungary, in that order. Relatively speaking, however, it was Sweden that took in the highest number (8.4 applicants per thousand inhabitants), followed by Hungary (4.3) and Austria (3.3) (Eurostat, 2015).

In response to the influx of asylum seekers criss-crossing the Schengen Area, several member states implemented temporary border controls at EU's internal borders (see, e.g., Niemann & Zaun, 2018). In the first place, these were erected to regulate the large number of individuals migrating, primarily on foot, from Greece via the Balkans up to Hungary and, further, towards Austria, Germany, and the Nordic countries. At the national level, the crisis also had far-reaching consequences in many EU member states. In Sweden, for example, which received more than 163,000 asylum seekers in 2015, a provisional legislative measure was adopted in mid-2016 with the objective of implementing a more rigorous asylum policy still in accordance with international and European legal frameworks (Bucken-Knapp et al., 2020). Similarly to several other member states, also temporary border controls were introduced at the country's borders. The diminishing sense of solidarity behind measures like these had a detrimental impact on the conditions of asylum seekers across the Union. Large numbers of asylum seekers were, for instance, confined to refugee camps severely lacking in basic amenities and resources required to meet their inhabitants' fundamental needs (Cabot, 2018).

As regards the diminishing sense of solidarity experienced across the EU, a certain shift in attitudes was brought about by Russia's invasion of Ukraine in the spring of 2022 (e.g., Carrera & Ineli-Ciger, 2023).

Prompted by the war and the events of 2015, the European Commission went on to publicize its view that the EU was now facing the biggest refugee crisis since the conclusion of the Second World War. While just shortly before, in 2015–2016, EU member states had moved to pursue increasingly restrictive asylum policies with detrimental effects on nearly all refugees, they now, individually and jointly as a Union, demonstrated an unforeseen, staunch attitude of responsibility and solidarity vis-à-vis refugees from Ukraine. In March 2023, shortly after the commencement of Russia's military intervention in it, EU's Mass Refugee Directive (also known as the Temporary Protection Directive), adopted in 2001 following the conflicts in former Yugoslavia, was activated by the unanimous European Council for the first time, to offer quick assistance and protection to all Ukrainians fleeing the war.

EXTERNAL ACTION BY THE EU TO ADDRESS THE REFUGEE CRISIS

The attempts to reduce the number of refugees arriving at the Union's external borders and curb irregular migration have resulted in the strengthening and externalization of EU migration control (Longo & Fontana, 2022). By reformulating existing aid agreements and setting up special funds (such as the European Union Emergency Trust Fund for Africa), the EU has to a large extent transferred the management and control of refugees and migrants to third countries (Mlambo, 2020). Partner countries are eligible to receive aid provided that they co-operate with the EU in the return of their nationals having sought asylum in member states, or implement effective border management and migration policies (Longo & Fontana, 2022). The provision of aid thus serves as an incentive for partner countries to engage in collaborative efforts around migration. In 2016, these kinds of agreements were concluded with Ethiopia, Mali, Niger, Nigeria, and Senegal, with the aim of reducing migration to the EU from these countries.

In addition to the agreements related to aid, the EU has also adopted instruments integrating trade and migration policies, commonly referred to as 'compacts' (European Commission, 2019). Thus far, such have been concluded with Jordan and Lebanon, significant migrant-sending countries in the EU's neighbourhood. The most prominent agreement signed with a third country to reduce migration to the continent from it is with

Turkey, in March 2016. The official rationale provided for the agreement by the European Commission was that it would help establish a safe, legal pathway for refugees from Syria to reach the EU, while at the same time curtailing people smuggling en route. The agreement further stipulated that all new irregular migrants arriving from Turkey to Greek islands subsequent to 20 March 2016 were to be returned to Turkey.

As part of the agreement, the EU committed to providing 3 billion euro in assistance to Turkey, officially for the benefit of refugees in it. A further 3 billion euro was pledged until the conclusion of 2018. The funds were earmarked for specific purposes, such as the construction of hospitals, schools, and other concrete development projects. Following the implementation of the agreement, the number of refugees arriving in the EU via the Mediterranean has indeed declined. In the new situation, however, refugees have begun to pursue alternative routes into the EU, often assisted by human traffickers. The number of individuals undertaking the perilous sea journey via Libya to Italy, for instance, has increased markedly: according to data by Frontex, by 40 per cent in 2017 compared to the previous year (Frontex, 2017).

In February 2017, the EU then concluded an agreement with the government of Libya. According to it, EU countries would provide training and support to Libya (its coast guard), which in turn would do its best to prevent individuals from embarking from its territory on a journey to Europe through the Mediterranean Sea. Additionally, the European Commission committed 1.9 billion euro from the EU budget to bolster the capabilities of the country's coast guard. The arrangement has, however, resulted in the practice of detaining individuals in Libyan camps, where they are frequently subjected to maltreatment, earning complaints to both Italy and the EU by human rights organizations on the continent and internationally (e.g. Amnesty International, 2021).

In July 2023, the EU entered into a co-operation agreement with the Tunisian government, describing it as a 'broad partnership package' (European Commission, 2023). The primary objective with it was to enhance collaboration on migration-related issues, particularly to prevent migrants from Tunisia from entering the EU and combat people smuggling. The Union pledged 105 million euro in support of Tunisia's border security apparatus, especially to equip its coast guard with advanced radar systems and vessels. To secure Tunisia's participation, the agreement encompasses a multitude of additional domains, including investments in green energy generation in the country, expansion of trade relations

with it, and assistance with its fiscal affairs. Similarly to other agreements with third countries, the agreement has been subjected to criticism from human rights organizations such as the Human Rights Watch, which have accused Tunisia of inhumane treatment of migrants over the years (Human Rights Watch, [2023](#)).

THE NEW ASYLUM AND MIGRATION PACT

Following the failure of the 2015 European Agenda on Migration, particularly the Union's inability to implement a system of solidarity within the Dublin system allocating responsibility for the examination of asylum applications, considerable optimism has been invested in the Union's new Pact on Migration and Asylum, presented by the European Commission in 2020 (European Commission, [2020](#)). Following more than four years of negotiations, the much-awaited Pact was finally adopted by the European Parliament on 10 April 2024, with 322 members of the European Parliament (MEP) voting in favour of it (mostly those from the centre, centre-left, and centre-right parties) and 266 MEPs against (mostly those from the further-left and further-right parties). The Pact presents a comprehensive approach to external borders and to asylum and return systems, the Schengen area of free movement, and the externalization of migration. From the start, it was welcomed by European politicians as a significant collective achievement. At the same time, however, civil society organizations, researchers, and experts in the area voiced concerns about what they saw as its detrimental impact on the right of migrants to claim asylum and on the overall functioning of the EU common asylum system (Human Rights Watch, [2024](#)).

As a comprehensive and complex package, the precise scope and boundaries of the Pact on Migration and Asylum are difficult to determine, however. It covers a whole number of interrelated areas, including asylum, border management, legal migration, and anti-smuggling measures, with a particular focus on the external aspects of these policies. Juridically, it comprises twelve different legislative instruments: the Asylum and Migration Management Regulation (AMMR), the Asylum Procedures Regulation (APR), the Crisis and Force Majeure Regulation (which incorporates provisions from the proposed Instrumentalization Regulation), the Eurodac Regulation, the Reception Conditions Directive, the Qualification Regulation, the Resettlement Framework Regulation, a regulation establishing the European Union Agency

for Asylum, the Single Permit Directive, and the Blue Card Directive (European Commission, 2024). These can be broadly categorized into three key dimensions: an external dimension encompassing the establishment of partnerships with third countries outside the EU; an internal dimension establishing asylum rules within the Union; and a final dimension concerning the implementation of robust and effective control measures at the Union's external border.

A comparison of the new Pact with the EU's previous regulations on migration management reveals no evidence of any paradigmatic shift. The new elements added to the pact regulations appear to merely affirm and reinforce the prevailing migration control system already in place. To illustrate, the new Pact simply broadens the remit of Eurodac, the EU's biometric database for asylum seekers, to also encompass a collection of fingerprints, facial photographs, and biographical information for all individuals aged six and above (previously, the database only included fingerprints, and only for individuals over 14, with no accompanying biographic details). The new Pact also facilitates police access to the database, already possible in the old system. Of the various instruments comprising it, the AMMR retains the requirement already set forth in the Dublin Regulation that asylum applications be reviewed by the first member state entered by the asylum seeker, effectively ensuring that the majority of asylum claims will continue to be processed in Greece and Italy. However, what is new is that the regulation permits transfers to a third country on the grounds of the applicant's familial connections, previous residence, or educational history in another member state.

In addition, the new Pact formalizes the policy designating reception centres on islands off the coasts of Greece and Italy as 'hotspots' and transit zones not actually part of the territory of the EU. Excluding many Mediterranean islands from the EU territory this way prevents asylum seekers from fully enjoying their fundamental rights. Moreover, the Pact's Qualification Regulation revises the Union's asylum procedure with the express aim of accelerating the deportation of individuals to have travelled via a 'safe third country' or departed from a country with recognition rates below 20 per cent. Much for this reason, too, the new Pact has been subjected to broad criticism, relying as it is seen on group characteristics for fast-track deportations rather than individual review (Amnesty International, 2024). Additionally, there have been allegations that the reforms infringe upon the right of appeal by deporting individuals prior to the resolution of an appeals process and extending the scope of detention (Euractiv, 2024).

FASHIONING A LONG-TERM SUSTAINABLE EUROPEAN MIGRATION POLICY

Overall, then, one can raise the question of whether the reforms brought by the new Migration and Asylum Pact can help to ease tensions within the Union over irregular migration, and whether they may prove sufficient for it to avert failures in responding to future migration crises. To answer these questions, one must first consider the issues of timing and implementation. The new system is due to take effect not until mid-2026. That it feels still very far away is not least because of the challenging geopolitical and international security outlook right now and the polarized political debates on immigration presently ongoing in many member states. It is probably fair to say that the new Pact will not be able to do much any time soon to influence the political and public discourses currently circulating on the nature of the Union's external border, particularly on whether this border should be welcoming or unwelcoming to those entering Europe via the asylum system.

In response to our research questions above, two potential outcomes can be hypothesized. The first of these promises an affirmative answer to them, in the form of effectively and efficiently functioning border procedures and diminishing secondary movements produced by the reforms. A renewed sense of trust among member states perhaps emerges, based on the perception that the new Pact represents a mutually beneficial compromise. The principle of solidarity among the member states then begins to inform practice, and the underlying atmosphere of crisis surrounding migration and asylum issues gradually dissipates. Ultimately, the pervasive transgressions of the EU law, such as the acceptance and even promotion of inadequate reception facilities, the prolongation of temporary internal border controls, and the implementation of pushbacks in contravention to the principle of non-refoulement, will all cease and are effectively and definitively prohibited.

The second scenario, however, sees the conditions only worsening as a result of the Pact's consequences. In this scenario, the new border procedures specified by the Pact cannot be completed within the tight time frame given for the task, 12 weeks. The inhuman and degrading conditions of reception in border centres persist, resembling of the current hotspots on Greek islands. Secondary movements of migrants and asylum seekers continue, with no solidarity among the member states to rectify or remedy the situation. On the contrary, an even greater distrust towards

one another develops as a result, contrary to the intended logic of the Pact. Disregard for the EU law persists, and northern member states seek to reintroduce internal border controls within the Schengen area to shield themselves against the influx from frontline states.

It is unclear which of these scenarios will ultimately become our reality, and it is also more than possible that the outcome will lie somewhere between the two. A clearly critical factor in the successful implementation of the new Pact is, however, the presence, or re-creation, of solidarity among the EU member states. One of the main challenges in the negotiations around the new Pact was to resolve the question of how to support member states now to be more involved in the refugee and migrant intake at the Union's external borders. The processing of asylum applications remains governed by the Dublin Regulation, which has shown significant shortcomings in practice. The new Pact on Asylum and Migration retains the main principle of the Dublin Regulation, namely that the asylum application is to be examined in the member state where the asylum seeker first arrives. However, the Pact also introduces the notion of 'flexible solidarity', which allows member states to assist those among them that experience migratory pressures. This they can do through migrant redistribution, financial contributions, or capacity building. The Pact proposes the creation of an EU-wide solidarity fund for the purpose, to facilitate the provision of support to member states according to their respective migration burdens. In this manner, the concept of solidarity is transformed in the EU law, and thus also political practice, from a mandated obligation to a voluntary option, something left to the individual member states' discretion. This rather pragmatic solution was likely a precondition for the Pact's being consented to by all, reflecting the continued inability of member states to reach a mutual agreement. Under the new Pact, each member state is to assume responsibility for a certain share of asylum seekers within the Union, with the allocation determined by a combination of economic factors, the country's geographical size, and the historical numbers of people received. In the event of a refusal by a member state to accept refugees, it will be required to provide financial compensation amounting to approximately a quarter of a million euros per asylum seeker. All in all, it could thus be argued that the proposed solidarity mechanism in the new Pact reflects the reality of a union based on two different (and incompatible) sets of values. One of these entails that member states accept asylum seekers on the grounds of not only a moral obligation, but also a legal obligation to fulfil the requirements of

international law. The other one proceeds from the view that member states are opposed to accepting refugees. The adoption of the Pact thus amounts to EU legislation that not just leaves room for, but also institutionalizes, guiding values that are inherently incompatible with one another, as the solidarity mechanism permits member states to continue implementing restrictive asylum and migration policies.

From the migration crisis of 2015–2016 onwards, sustainable migration has become the central goal of the EU migration policy. This raises the question of what such a sustainable EU migration would involve in terms of legislation and policies adopted. The term carries a positive connotation and is perceived as implying commitment to better law and policy-making for the future of the Union. Yet, from the New Pact regulations, it is not clear what such characteristics might look like, as the concept remains undefined in the agreement text. At a time of broader political disagreement, linking sustainability and migration served as a powerful tool used by the European Commission to create the political impetus necessary to drive forward the EU agenda on migration, with little change needed in the actual legal apparatus regulating migration. The adoption of the Asylum and Migration Pact of April 2024 serves as a case in point. With it, the EU's work to manage its asylum and refugee problem resulted in little more than a diversion of both resources and attention away from other strategic work on migration.

There is a shared understanding by all that migration will only increase in the coming years. The process of globalization gives rise to a whole host of urgent pressures—economic, political, cultural, and social—that will propel international, indeed worldwide migration. At the same time, migration has become a multifaceted transnational issue with major financial implications, generating hundreds of thousands of jobs worldwide; it is shaped by a complex network of individuals, agencies, and institutions with vested interests in the matter. The remarkable challenges of stemming, to say nothing of cancelling, a phenomenon of this magnitude and complexity does not, however, negate the continued relevance of national and international efforts to regulate and control it. Migration policies may well succeed in influencing the size and character of migration flows to particular destinations. Nevertheless, it seems doubtful that efforts to significantly reduce migration will turn out to be successful, given the powerful forces driving these flows. In the same way, it remains unlikely that the EU's new Pact on Migration and Asylum can offer tools with which to effectively manage future migration flows in a manner that

is sustainable in nature. For outsiders at least, it will more likely serve to reinforce the image of the EU as a Fortress Europe for which the primacy of borders and security remains untouched.

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