

The new Pact on Asylum and Migration: An opportunity seized or squandered?

After years of treating asylum and migration in crisis mode, we believe the proposed Pact on Asylum and Migration is an opportunity for the EU and its Member States to change direction. It is an opportunity to develop a rational and rights-based asylum and migration policy. Recent cooperation among Member States signals the possibility of a fresh start, which should build on the lessons of the recently attempted and largely failed reform of the Common European Asylum System (CEAS). However, there is a risk that the Pact may include or prepare the groundwork for damaging legislative proposals, in particular what has been termed the “border instrument”.

No more old wine in new bottles

Some Member States continue to promote the idea of a mandatory border procedure in non-papers and other informal contributions. Extrapolating from these documents and debates, the potential border instrument would combine the worst and most controversial elements of the 2016 CEAS reform package, pulling together parts of the Asylum Procedures Regulation, Dublin IV and recast Return Directive.

The procedure would be applied to all persons who arrive in the EU to seek protection and would lead to a massive expansion of detention centres at the borders. It would be truncated, with many necessary safeguards removed – but will still require the establishment of judicial infrastructure in the border centres. It may be combined with new proposals for mandatory safe third country and first country of asylum concepts, which [would undermine access to protection in Europe](#), contribute to containment of refugees in other regions and jeopardize efforts for a more balanced sharing of responsibility for people who are displaced globally.

Reducing rights and increasing detention cannot be the answer

A change to the legal framework to introduce a mandatory, accelerated border procedure would undermine fair and effective examination of international protection claims. It is unlikely that all *refoulement* risks could be properly assessed in such a procedure and many versions of the plan significantly reduce the right to effective remedy. In addition, it will lead to a huge increase in the numbers of people detained and the length of detention, to cover the length of asylum processes and appeal processes. Any proposal that reduces access to a fair and efficient asylum procedure should be rejected.

The presentation of [border procedures as a silver bullet to address all ailments of the EU's current asylum system is a fraud](#); it will rather exacerbate many flaws and constitute a replication of the situation witnessed currently on the Greek islands. It also reinforces rather than rebalances the disproportionate responsibilities of countries at the borders. While the attempt is made to buy support through offering “solidarity” measures, such as redistribution of persons whose claims are deemed admissible, this will not compensate for having to introduce and manage large-scale prisons for people arriving in Europe.

Related concerns about the Pact are that it might focus excessively on return – the EU could hardly invest more resources in return which has been a priority for years. This disproportionate focus on return is damaging and counter-productive and often comes at the expense of investing in fair and efficient asylum procedures. The same goes for the continued focus on shifting responsibility for asylum to third countries via informal deals or [instrumentalising development assistance for achieving EU migration control objectives](#).

Seizing the opportunity of the Pact: Focusing on compliance where relevant...

The key to making asylum work in Europe is [to increase compliance with existing asylum law](#), not reform (with the exception of the Dublin III Regulation). Prominent implementation gaps which need to be addressed immediately include: inadequate reception provision; barriers to registration; lack of special procedural guarantees; the “asylum lottery” resulting from poor and inconsistent decision-making; and harmful and inefficient use of Dublin. In addition, the widespread practice of push-backs at European borders must end. The

European Commission should address these gaps through monitoring compliance, evaluating legislation, issuing guidance to support proper implementation and, where relevant, pursuing enforcement and infringement procedures.

... and reform where necessary: Dublin

It is promising that more EU actors are prepared to say that the Dublin system for allocation of responsibility has failed. The Pact could be the launchpad for a meaningful reform process. The proposed Dublin IV Regulation did not address the key flaw of Dublin: the first country of arrival as default for allocation of responsibility - so it is not a good basis for a discussion. However, there are multiple proposals for alternatives to Dublin which involve the deeper overhaul of the system which is needed for eventual and meaningful reform. These have to be on the table if a solution which is fair, sustainable and humane is to be found.

In the meantime, the discretion available to Member States in Dublin III means they can make political choices to implement the Regulation in a more humane and rights-based way, while mitigating difficulties that arise from the disproportionate division of responsibilities embodied in the system. Simply respecting the hierarchy set out in the Regulation would be a step towards improving the situation for refugees in Europe. First, prioritise family reunification. Second, limit transfer requests, especially when they are doomed to fail, leaving people in limbo and tying up judicial resources. Third, use the discretionary (sovereignty and humanitarian) clauses in the interests of refugees and to promote solidarity, through assuming responsibility whenever possible. Other short-term measures can be put in place to deal with the damaging impact of the system, such as relocation and use of EU funding in line with the needs of people arriving.

Expanding pathways to the EU and supporting inclusion through rights

With a focus on making asylum work in Europe, the Pact should also include a large-scale increase in safe and legal channels so that people fleeing persecution, war and conflict or are moving for other reasons are able to reach safety without having to rely on smugglers. A strong focus on inclusion in Europe, through rights, respect and regularisation is as important as getting asylum systems functioning. While “integration” is a national responsibility, there is a role for the EU: the review of the EU Action Plan on the integration of third country nationals is one opportunity; significant, ringfenced funding for inclusion in the next EU budget (MFF 2021-2027) is another. Key rights where the EU specifically could play a role include the right to work, which should include tackling labour market exploitation, and the right to housing for all to address the situations of destitution and homelessness. Addressing the shameful humanitarian crises in Europe, which result from denial of the rights – to housing, to social assistance – of those on the move, would also play a role in addressing public fear related to asylum.

The Process: Developing the Pact

Discussions about the development of policy and legislative proposals should go beyond Ministries of Interior to include all relevant ministries, implementing agencies, and civil society broadly understood, in particular refugees and migrants. We support a formal consultation process that involves NGOs as well as businesses, trade unions, local authorities and academia as called for in a joint NGO letter in January 2020.

A Pact for Europe starts in Europe

The Pact is an opportunity to improve asylum systems in Europe, to greatly expand safe and legal channels, and to mobilise EU support for inclusion. It is a chance for the EU to realise its commitment to the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration by implementing them in Europe. This means focusing on what is happening inside Europe not on continuing efforts to externalise responsibilities, with deals that undermine the rule of law and human rights, the values on which the EU was founded.

Signatories:

aditus foundation
Amnesty International
Arbeiterwohlfahrt Bundesverband e.V.
ARSIS – Association for the Social Support of Youth
AsyLex
Bulgarian Helsinki Committee (BHC)
Caritas Europa
CCME
Centre for Peace Studies Zagreb
Conselho Português para os Refugiados - CPR (Portuguese Refugee Council)
Consiglio Italiano per i Rifugiati – CIR
Cyprus Refugee Council
Der Paritätische Gesamtverband
Diakonie Deutschland
Diakonie Österreich
DRC Danish Refugee Council
Dutch Council for Refugees/VluchtelingenWerk Nederland
ECRE
Estonian Refugee Council
Finnish Refugee Advice Centre
FOCSIV, Italian Federation of Christian Organisation for International Volunteering (partner of the Faces of Migration project)
Forum réfugiés-Cosi
France terre d'asile
Fundación Cepaim acción integral con migrantes
Greek Council for Refugees (GCR)
Helsinki Foundation for Human Rights
Human Rights Watch
Hungarian Helsinki Committee
ICMC Europe
International Rescue Committee (IRC)
Irish Refugee Council
JRS Europe
Legal-Informational Centre for NGOs, Slovenia - PIC
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Network for Children's Rights
NRC
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OPU - Organizace pro pomoc uprchlíkům.
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