

# A year on the new pact: migration and asylum in the EU

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BACKGROUND DOCUMENT N. 14

Nov 2021





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## 1. The new pact on migration and asylum: Where we left off

pag. 2

## 2. Key challenges and progress under the new pact files

pag. 4

## 3. Conclusion

pag. 8

"This background document has been realized in the framework of the project, to spread data and information based on a scientific analysis. If you want to know more about this project and be part of its activities, please feel free to contact the leading partner Diaconia in Czech Republic (email: [nozinoval@diakoniespolu.cz](mailto:nozinoval@diakoniespolu.cz)), as well as Focsiv in Italy (email: [f.novella@focsiv.it](mailto:f.novella@focsiv.it))."

<sup>1</sup>This background paper has been realised in the framework of the "Faces of Migration" project (Migrant and SDGs, contract number CSO-LA/2018/401-798), co-financed by the European Union. The paper has been elaborated by Aurora Ianni e Mattia Giampaolo with the coordination of Andrea Stocchiero (Focsiv). This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union.

# 1. THE NEW PACT ON MIGRATION AND ASYLUM: WHERE WE LEFT OFF

In September 2020, the European Commission proposed a “fresh start” to the management of migration and asylum in the EU. **The New Pact (NP) on Migration and Asylum** has established a roadmap to overcome the critical issues already experienced in the management of the so-called “migration crisis” of 2015 and to guarantee “a strong and balanced migration and asylum system equal to the challenges of the future”. In line with the **2030 Agenda** call to “**facilitate orderly, safe, regular and responsible migration**” (**Target 10.7**) the NP aimed to ensure more effective migration governance at EU level overcoming the Dublin System and providing answers to possible new crises. The path to achieving these ambitious goals has resulted in various actions which have included both the internal and external dimensions of the EU.

## Main objectives and actions set out in the New Pact<sup>1</sup>

- a robust and fair management of external frontiers, which include an identity, sanitarian and security scrutiny;
- equal norms and laws in terms of asylum procedures and a facilitation process in terms of asylum and repatriation;
- a new mechanism of solidarity for search and rescue actions, crisis and pressure situations;
- better preparation and prevision of a future possible crisis;
- an effective repatriation policy and a coordinated approach at EU level;

- a complete governance in terms of asylum and migration policies at EU level;
- advantageous partnerships with third countries of origin and transit;
- development of legal paths of migration and sustainable patterns for those in need of protection and in order to lure talents in Europe;
- supporting integration policies.

Although presented as a radical reform of migration governance, many NGOs and civil society organisations (CSOs) have highlighted the criticalities of an instrument that proposed same old logic of externalization of borders, lack of real solidarity between Member States and lack of respect for the human rights of migrants, among others<sup>2</sup>. A year after the presentation of the New Pact, “there has been good progress at technical level, but political agreement on some key elements is still distant”<sup>3</sup>. The report on Migration and Asylum released by the European Commission in September 2021<sup>4</sup>, shows that the number of arrivals of irregular migrants, although below 2015 levels, started to rise in 2021 mainly through the Central Mediterranean route (+82%). The greatest increase was recorded towards Italy (mainly from Libya and Tunisia) and Spain (from Algeria and Morocco). In addition, due to the pandemic, asylum applications were temporarily stalled and fewer applicants were channelled into the Dublin procedure. Returns also fell (from 29% in 2019 to less than 18% in 2020)<sup>5</sup>.

<sup>1</sup> See background document no. 9 of Faces of Migration. Ianni A., Giampaolo M., “Migration governance in the European Union: the new Pact on Migration and Asylum”, Focsiv, January 2021. <https://www.focsiv.it/wp-content/uploads/2021/03/BackGround-Documment-n.-9-ENG-28.01.2021.pdf>

<sup>2</sup> For an overview of the main criticalities highlighted by a sample of NGOs on the occasion of the presentation of the New Pact, see Ianni, Giampaolo, Migration governance in the EU Op. cit.

<sup>3</sup> See <https://ec.europa.eu/info/sites/default/files/report-migration-asylum.pdf>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.



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The worrying developments in the field of migratory pressure with over 4,000 vulnerable migrants at the external border with Belarus, the crisis in Afghanistan, and the worsening of the Balkan route, recall the need to provide safe migration channels to the EU, as well as to implement solidarity and cooperation among Member States and between the EU and third countries.

This background document aims to provide an overview of progress in the framework of migration and asylum in the EU and of the criticalities still related to the New Pact, one year after the presentation of the roadmap.



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## 2. KEY CHALLENGES AND PROGRESS UNDER THE NEW PACT FILES

Despite the optimism of the EU about the opening of a new phase of migration management, for many observers the New Pact 'is not yet a Pact'<sup>6</sup> but a set of 'proposed measures to be negotiated between the Council and the Parliament'<sup>7</sup>. This is partly true in particular when we acknowledge that the Pact has reached a general agreement among the Member States as regards its external dimension, but the positions still differ on the management of migrants once they arrive within the EU's borders.

According to the Association for Juridical Studies on Immigration (ASGI)<sup>8</sup>, although the Pact has been presented as a turning point for Europe, it is a pragmatic move of the Union led by Member States' realpolitik. Indeed, the NP places great emphasis on border control to select migrants, on cooperation with third countries to manage the externalization of asylum procedures and contain migrants, as well as on strengthening repatriation processes. These aspects are considered key objectives.

The Pact is full of details in the part which deals with the external dimension of migration, while it remains vaguer on **the solidarity mechanism** which would regulate asylum claims and the relocation of migrants between Member States. As we outlined in another background paper<sup>9</sup>, the solidarity mechanism is, on paper, at the core of the Pact and is aimed at supporting the countries most exposed to massive arrivals (such as Italy, Greece, Spain and Malta). For example, as the Italian Interior Ministry

Luciana Lamorgese outlined in a press release<sup>10</sup>, *"the Pact's proposal includes points that are unacceptable for our country and for Med5<sup>11</sup>. However, Italy has always maintained a position of dialogue and a constructive stance at a political level and during technical meetings to guarantee that a key point of balance is reached between responsibility and solidarity without which the EU policy to manage migration flows will not be able to have a future."*



Ph. Avvenire

It is undeniable that the management of migration within European borders is still far from agreement. According to the Pact, **the solidarity mechanism** is applicable only in two cases: a) recurrent arrivals in the territory of a Member State through SAR (Search and Rescue) operations or in a situation of 'migratory pressure'; b)

<sup>6</sup> Theodora Ghazi, The New Pact on Migration and Asylum: Supporting or Constraining Rights of Vulnerable Groups?, European Papers, Vol. 6, 2021, No 1, pp. 167-175. Here's the link: <https://www.europeanpapers.eu/en/europeanforum/new-pact-migration-asylum-supporting-or-constraining-rights-vulnerable-groups>.

<sup>7</sup> ASGI, Lo stato del Patto Europeo sulla Migrazione e l'Asilo ad un anno dalla sua presentazione: l'Unione di fronte alle sue contraddizioni irrisolte, ASGI document, October 2021, [https://www.asgi.it/wp-content/uploads/2021/10/Documento\\_Stato-del-patto-UE-1.pdf](https://www.asgi.it/wp-content/uploads/2021/10/Documento_Stato-del-patto-UE-1.pdf).

<sup>8</sup> ASGI, Lo stato del Patto Europeo sulla Migrazione, Op.Cit.

<sup>9</sup> Aurora Ianni, Mattia Giampaolo, op. cit.

<sup>10</sup> ANSA, EU migration pact in parts 'unacceptable', says Italian interior minister Lamorgese.

<sup>11</sup> The Med5 are those countries on the shores of Europe: Greece, Spain, Italy, Malta and Cyprus.

in the event that a Member State finds itself in a situation of 'migratory emergency'. The decision to put the solidarity mechanism into practice, according to the Pact, is in the hands of the European Commission which should evaluate whether a country is experiencing a 'crisis' or not. In addition, in the first instance, solidarity is not mandatory, but it is based on the will of the single Member State which can decide to actively participate in the relocation of migrants or be part of the process by sponsoring and supporting the logistics of the procedures -i.e., sponsoring the repatriation of migrants-. Furthermore, **the relocation of migrants** in the solidarity mechanism does not consider the real needs and will of migrants. As outlined in a previous background document, the Dublin system is not overcome, and the Pact reinforces the screening procedure once migrants arrive in Europe<sup>12</sup>. According to Euromed Asylum<sup>13</sup> *"eighty per cent of migrants landing in Italy or Spain would be forced to go through the accelerated asylum procedure deprived of their personal freedom"*.

In addition, the Pact outlined the need for greater cooperation and a major **role of EASO** in supporting voluntary relocations of Member States. The relocation mechanism was adopted in 2015 for those nationalities whose recognition rate of international protection is equal to or greater than 75% (such as Eritreans and Syrians). The EC report, released in September 2021, does not mention any details on how this mechanism was implemented.

The report refers to the 2019 Malta Declaration which, in turn, did not provide details on "quotas, percentages and distribution keys"<sup>14</sup>. As for EASO, the report highlighted the strengthening of the agency's personnel within Member States -notably in those countries under pressure from migrant flows- to implement solidarity mechanisms. The agency should empower Member States to improve a more efficient and consistent asylum system "through greater operational and technical support and common operational standards, indicators guidelines and best practices to help implement EU asylum law". In this way, EASO should act as an evaluator of reception standards within EU countries through a monitoring agency in order to study a common reception system.

Critical points are also related to **SAR operations**. According to PICUM (Platform for International Cooperation on Undocumented Migrants)<sup>15</sup>, the EU Pact on Migration and Asylum is failing to effectively prevent the criminalization of solidarity with migrants. This was reported by an EU document which, while recognizing the role of 'mandated organizations' -such as NGOs- to carry out search and rescue activities in the Mediterranean, criminalizes those activities not directly linked to rescuing migrants at sea. Thus, it 'risks leaving out activities on the territory and activities that are not directly lifesaving, but still extremely important, such as legal aid'<sup>16</sup>. In addition, the PICUM document also stresses that the Commission has recommended strict measures for 'mandated NGOs' involved in SAR operations at the administrative level.

<sup>12</sup> Aurora Ianni, Mattia Giampaolo, op. cit.

<sup>13</sup> <https://ilmanifesto.it/contro-il-patto-su-immigrazione-e-asilo-mobilitarsi-a-ogni-livello/>.

<sup>14</sup> <https://eumigrationlawblog.eu/the-malta-declaration-on-search-rescue-disembarkation-and-relocation-much-ado-about-nothing/>

<sup>15</sup> PICUM, HELP IS NO CRIME: ARE EU POLICIES MOVING IN THE RIGHT DIRECTION? Criminalisation of solidarity under the EU Pact on Migration and Asylum, PICUM, October 2021. Here's the link: <https://picum.org/wp-content/uploads/2021/10/Help-is-no-crime.pdf>.

<sup>16</sup> Ibid.

This could somehow reduce the number of organizations and prevent them from starting their own activities. The Commission has been timidly open to NGOs involved in **screening activities** on arrival. This was one of the requests of these organizations. However, the participation of NGOs is not guaranteed. Indeed, a Member State can prohibit NGOs from accessing border areas and criminalize those who try to do so to provide services, support, medicines and legal assistance to people in need.

One of the main critical points of the Pact remains the **role of Frontex**. Frontex is the European agency that monitors the EU's borders, both land and sea, intercepting any attempts at irregular entry. In recent years, the Agency has been accused by CSOs of preventing migrant boats and migrants at Eastern European land borders from entering Member States. This position has been heavily criticized by some MEPs who have called for an independent investigation against Frontex for its strategy of pushing back migrants<sup>17</sup>. As reported in the Pact, the Agency is still at the core of EU border control. Furthermore, in the EC report issued in September 2021, the EU calls for a stronger role of Frontex. This is clear on the Polish- Belarusian border where the Agency has been called to prevent illegal entry.

As many have reported, the situation on **the border between Poland and Belarus** is critically affecting the human rights of migrants, and this is due to the anti-migration stance of both countries. Between August and October, some 32 Afghans were pushed back from Poland to Belarus.

The Polish authorities claimed they used coercion and force against them and many CSOs denounced these practices. Amnesty International<sup>18</sup> and HRW monitored the situation and reported a series of abuses by Polish and Belarusian border guards.



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Due to the latest allegations against FRONTEX, the EU has set up a monitoring body to control the Agency's moves, activities and procedures. However, despite many critical voices, the EC report found no evidence of human rights violation by Frontex staff. Instead, the role of the Agency is strengthened: its cooperation with third countries is extended (Albania, Montenegro and Serbia) and remains a major player in the coordination of returns. As for the latter, in fact, Frontex coordinated, in 2021, 232 return operations undertaken by Member States through charter flights to 28 non-EU countries, repatriating almost 8,000 third-country nationals<sup>19</sup>.

<sup>17</sup> [https://www.statewatch.org/analyses/2021/pushback-practices-and-their-impact-on-the-human-rights-of-migrants/#\\_Toc63436684](https://www.statewatch.org/analyses/2021/pushback-practices-and-their-impact-on-the-human-rights-of-migrants/#_Toc63436684)

<sup>18</sup> See here for the Amnesty International report: <https://www.amnesty.org/en/latest/news/2021/10/poland-17-afghans-at-the-border-violently-pushed-back-to-belarus/>.

<sup>19</sup> <https://ec.europa.eu/info/sites/default/files/report-migration-asylum.pdf>



That said, not only frictions but also key developments in **cooperation between the EU and third countries** have been reported in the last year. According to the European Commission report<sup>20</sup>, in June 2021, 5.7 billion euros were committed for the next four years to support Syrians, other refugees and host communities in Jordan, Iraq, Lebanon, Syria, and Turkey.

Since 2016, the EU has also been disbursing 6 billion euros through the FRIT mechanism<sup>21</sup> and has renewed more than once its commitment to keep on supporting Ankara in the field of migration. Capacity building on border management in Libya, Morocco and Tunisia is a “major theme” of the Emergency Trust Fund for Africa and will continue after the Fund’s expiry. Under the North Africa branch of the Trust Fund, Libya was assisted with 455 million euros to protect people in need and combat smuggling and trafficking of migrants<sup>22</sup>. The EC has also pledged one billion euro to avert a major humanitarian and economic collapse for Afghanistan by addressing the urgent needs of the country, its people and the region<sup>23</sup>.

Some **progress** has been made in the last year on the legal framework for migration and asylum<sup>24</sup>, as the EC report shows. To name a few, an **Action Plan on Integration and Inclusion 2021-2027** was adopted in November 2020 which proposes inclusive education and training

from childhood to higher education, promoting access to health services, including mental health and access to adequate and affordable housing<sup>25</sup>.

Regarding legal migration, political agreement was reached in May 2021 on the revised **Blue Card Directive**, which aims to facilitate the attraction of highly qualified professionals from third countries to the EU. The main changes introduced include more flexible requirements to benefit from an EU Blue Card, enhanced rights particularly in the field of family reunification and intra-EU mobility, greater flexibility to change employer or position<sup>26</sup>.

In April 2021, the Commission also adopted the **EU strategy on voluntary return and reintegration**, to strengthen the legal and operational framework for voluntary returns, improve the quality of programs, establish enhanced links with development initiatives and strengthen cooperation with partner countries<sup>27</sup>.

A renewed **EU action Plan against migrant smuggling (2021-2025)** was also adopted in 2021 which aims to strengthen cooperation with partner countries and international organisations, preventing exploitation and ensuring the protection of migrants, as well as sanctioning traffickers active inside and outside the EU, among others<sup>28</sup>.

<sup>20</sup> See report on Asylum and Migration, September 2021

<sup>21</sup> Facility for refugees in Turkey (FRIT)

<sup>22</sup> See the European Commission Report on Migration and Asylum, September 2021, <https://ec.europa.eu/info/sites/default/files/report-migration-asylum.pdf>

<sup>23</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_5208](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5208)

<sup>24</sup> To find out more about the main developments in migration and asylum over the past year, see the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum. <https://ec.europa.eu/info/sites/default/files/report-migration-asylum.pdf>

<sup>25</sup> See [https://ec.europa.eu/migrant-integration/news/ec-reveals-its-new-eu-action-plan-integration-and-inclusion-2021-2027\\_en](https://ec.europa.eu/migrant-integration/news/ec-reveals-its-new-eu-action-plan-integration-and-inclusion-2021-2027_en)

<sup>26</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2522](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2522)

<sup>27</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1931](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1931)

<sup>28</sup> See [https://ec.europa.eu/home-affairs/policies/migration-and-asylum/irregular-migration-and-return/migrant-smuggling\\_en](https://ec.europa.eu/home-affairs/policies/migration-and-asylum/irregular-migration-and-return/migrant-smuggling_en)



### 3. CONCLUSION

Despite some developments on the legal framework for migration and asylum, major criticalities in the field of migration governance in the EU remain and are still of crucial relevance. Above all, there are divisions between the Member States which are far from being overcome, especially in terms of co-responsibility. If political agreement has been reached on externalization of borders, including deals with third countries to reduce illegal migration and tighter border control, internal migration management and real solidarity between Member States are taking too long. In this regard, the Visegrad front is at the core of the debate. The quartet opposes the relocation of migrants and refuses to participate in a shared vision of the migration management. In addition, the critical situation with Belarus (as well as along the Balkan route) recalls the age-old issue that emphasizing the externalization of borders is only a failing approach in terms of successfully managing migration, safeguarding the human rights of migrants, and respecting the principle of non-refoulement.

The current situation at the Polish-Belarusian border is the result of the unwillingness of some EU Member States to take a serious approach to migration and its management. On the one hand, Belarus is trying to exploit migrants for political aims, but on the other hand, the EU is, once again, not ready to face a new wave of migrants.

If the EU is to deliver on its promises to reshape migration governance by balancing Member States' interests and needs, while effectively managing and combating illegal migration and strengthening safeguards for vulnerable migrants, the roadmap to be adopted will need further measures. These include a) strengthening legal channels for migration especially for people in need of international protection; b) urging the effective implementation of solidarity between Member States to really "share the burden" of migration governance; c) revising the externalization approach at least by balancing the non-subordination of the protection of human rights and respect for international law to geopolitical interests.



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Furthermore, the outsourcing of migration crisis management cannot be considered as a long-term solution and can result in a double-edge sword. Hence, considering that pushbacks and “walls” cannot stop a structural factor such as migration, putting humanity at the core of the agenda while turning migration into a chance of development can be the only and successful way forward for keeping the promise of the New Pact for a fresh start for migration governance in the EU.

The “**Io Accolgo**” campaign<sup>29</sup> FOR A NEW EUROPEAN PACT ON MIGRATION:

- I.** Promoting legal entry channels for job seekers.
- II.** Bringing protection closer to refugees and not outsourcing the right of asylum.
- III.** Promoting a European search and rescue program and ending the season of criminalization of NGOs.
- IV.** Guaranteeing access to the right of asylum and respect for the principle of non-refoulement for migrants arriving at our borders.
- V.** Eliminating accelerated and border procedures which do not respect the right to a full and fair examination of asylum applications.
- VI.** Promoting forms of cooperation with third countries to guarantee legal access to those who intend to emigrate, making funding transparent and a real contribution to local sustainable development.

**VII.** Reforming the European Asylum System, abolishing the concept of the country of first landing and ensuring equal standards throughout the EU.

**VIII.** Ensuring the freedom of residence within the EU of holders of International Protection.

**IX.** Guaranteeing the full right of appeal for unsuccessful protection seekers.

**X.** Implementing a thorough reform of the European reception system for asylum seekers. Ending the season of “camps” and “hot spots”.



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<sup>29</sup> This document was published by the Italian campaign ‘Io accolgo’ (I welcome). It is a 10-point document for a new Pact on migration based on fair and just reception and respect for the rights of migrants. Here’s the link: <https://www.centroastalli.it/la-campagna-io-accolgo-lancia-un-nuovo-patto-europeo-dei-diritti-e-dellaccoglienza/>.





This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of Focsiv and can under no circumstances be regarded as reflecting the position of the European Union.

This document is part of the SDGs and Migration – Multipliers project and Journalists Addressing Decision Makers and Citizens project funded by the European Union's Development Education and Awareness Raising (DEAR) programme