

# The New Pact on Migration and Asylum

## A Brief Summary and Next Steps

### Executive summary

*The New Pact focuses on three main pillars: (a) improving cooperation with international partners in the area of migration management; (b) strengthening the EU's external borders, facilitating effective identification mechanisms and updating procedures with the aim of simplifying the asylum process and; (c) establishing a more effective mechanism for solidarity both within and outside EU borders. The following paper briefly summarises each of the proposed initiatives, focusing on their implications for refugees and Member States alike. The final two sections provide an insight into the state of negotiations, the key players and the main criticisms the pact has faced thus far. More specifically, criticisms surrounding the overwhelming focus on returns and readmissions, as well as recent controversial reports of pushbacks at the EU external borders are examined. Overall, while many have referred to the Pact as an ambitious initiative, there has also been a growing scepticism towards the possible "watered down" results of the ongoing negotiations and the implications this may have for the migration and asylum system in Europe.*

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## What is the New Pact on Migration and Asylum?

Nearly all societal challenges faced today have an impact on migration. [The New Pact on Migration and Asylum](#) aims to address key urgent needs and normalise migration by providing a comprehensive approach to reform the overall migration and asylum system. It aims to integrate the internal and external dimensions of migration policy by bringing together instruments on border management, integration, asylum governance, external relations and partnerships through a package of 9 new legislative and non-legislative initiatives coupled with the Asylum and Return reforms proposed by the Commission in 2016 and 2018.

### Legislative

- New Asylum and Migration Management Regulation;
- New Screening Regulation;
- New Crisis and Force Majeure Regulation;
- Amended proposal revising the Asylum Procedures Regulation;
- Amended proposal revising the Eurodac Regulation.

### Non-Legislative

- New recommendation on Migration Preparedness and Crisis Blueprint;
- New recommendation on Resettlement and Complementary pathways;
- New recommendation on Search and Rescue Operations by Private Vessels;
- New guidance on the Facilitators Directive.

### Reforms

- The EU Asylum Agency Regulation
- The Reception Conditions Directive
- The Qualification Directive
- The Union Resettlement Framework
- The Return Directive

## 1. A common European Framework for Migration and Asylum Management

The Common European Framework for Migration and Asylum Management aims to make [procedures and standards at the border](#) more consistent and more efficient across the Union. As a result, the Commission is proposing amendments to its 2016 proposal for an [Asylum Procedure Regulation](#), which would integrate screening, asylum and return procedures under one single legislative file – a notable change, as procedures are all separate and independent from one another at the moment.

A major novelty of the Pact is the proposal to introduce a [pre-entry screening of third-country nationals](#) at the external borders of the EU. The aim of this proposal is to identify those who are unlikely to receive international protection as early as possible in order to prevent the “abuse” of Member States’ asylum system. This is arguably the most contentious part of the Pact, as the overwhelming focus on “catching migrants out” is highly criticised by various humanitarian actors. It is particularly problematic as, after the pre-entry screening (conducted immediately after disembarkation or at the airport) national authorities would be allowed to fast-track third-country nationals towards the appropriate procedure, namely asylum or return.

On the other hand, such screening would also identify people with vulnerabilities and special needs, who could be provided with the necessary services. The proposal also prescribes the establishment of an independent monitoring body for fundamental rights by each Member State.

In addition to pre-screening, the pact also proposes the creation of a new common asylum and migration database amending the current [‘Eurodac’](#) system. A common system would allow for both applications and applicants to be counted across the Union, thereby providing clear numbers of how many people requested asylum and ensuring that repeated applications by the same applicant in different Member States are identified.

The above proposals are premised on the idea that the new [Regulation on Asylum and Migration Management \(RAMM\)](#) will alleviate the bureaucratic burden on countries of first entry by transferring asylum seekers to other EU Member States. In this sense, the RAMM would incorporate an amended version of the [Dublin III Regulation \(Regulation \(EU\) 604/2013\)](#), which ascribes primary responsibility for processing an asylum application to the applicant’s country of first entry, and also create a new solidarity mechanism. Nonetheless, changes to the Dublin III Regulation are in fact minimal, as the RAMM only adds a few new criteria for relocating asylum seekers.

The major novelty is the [solidarity mechanism](#), which is both mandatory, as it requires all Member States to share responsibility, and flexible, as states can choose among three forms of solidarity, namely, relocation, return sponsorship, and “in kind” contributions. The new system would therefore function as follows: when a person arrives, the State of first entry will initiate the Dublin procedure to determine the state responsible for their application; most often, the state of first entry will remain responsible throughout; if this state is under pressure, other Member States are expected to support it by relocating asylum seekers and refugees to their territory, sponsoring returns, or providing financial and operational resources. While on paper the new solidarity mechanism inspires hope for a better functioning system of cooperation, in practice [many have expressed scepticism](#) and have called it overly ambitious and ambiguous. A key concern is that, as long as pressures remain on the external borders and on the first country of entry, the risk of human rights violations at the borders will remain high.

Outlining an [effective and coordinated approach to returns](#) is another key aim. The [current policy on returns](#) in the EU is said to be largely ineffective, often serving as an incentive for irregular migration. As a result, the Commission has proposed a reinforcement of structures inside the Union which would help avoid absconding<sup>1</sup> and facilitate cooperation on return and readmission. This would involve embedding returns in national strategies and increasing the role [Frontex](#) plays in all steps of the return procedure.

No agreement on any aspects of the Asylum and Migration Management Regulation has been reached yet<sup>2</sup> and discussions continue under the Portuguese Presidency, with a great focus on the solidarity mechanism. The timelines displayed below are likely to change as negotiations are taking considerably longer than originally predicted by the Commission.

<sup>1</sup> Action by which a person seeks to avoid administrative measures and/or legal proceedings by not remaining available to the relevant authorities or to the court. Available at: [ec.europa.eu/home-affairs/glossary\\_search/absconding\\_en](https://ec.europa.eu/home-affairs/glossary_search/absconding_en).

<sup>2</sup> European Parliament, Written Answer to parliamentary questions by Ms. Johansson on behalf of the European Commission, 4 March 2021. Available at: [https://www.europarl.europa.eu/doceo/document/E-9-2020-006896-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-006896-ASW_EN.html).



## 2. A robust crisis preparedness and response system

The aim of the Pact is to build an asylum system that works not only in ordinary times, but also in situations of crisis. To prevent the collapse of the system as happened in 2015, the Commission tabled the following measures:

- A new recommendation on a [Migration Preparedness and Crisis Blueprint](#), with the purpose of improving preparation and foresight through an evidence-based approach and ensuring that Member States in need receive financial and operational support as swiftly as possible;
- A proposal for a [Regulation on Crisis and Force Majeure](#), whose objectives are (1) to allow flexibility to Member States and grant immediate protection status in case of crisis and (2) to ensure that the solidarity mechanism envisaged in the RAMM functions even under great pressure. This Regulation would allow Member States to temporarily derogate from the normal procedures, and it would also shorten the time frame and expand the scope of compulsory relocation (to applicants and beneficiaries of immediate protection) and return sponsorship.



## 3. Integrated border management

While the changes discussed so far come into play only after asylum seekers have reached Europe, the Pact also has a strong external dimension. In terms of external borders, it promotes cooperation between national and supranational authorities in the so-called [Integrated Border Management instrument](#). Currently, many border operations are left to NGOs or Member States. By streamlining some aspects of [search and rescue](#) as well as border security operations, the Commission hopes to safeguard the credibility of the EU system and build trust among Member States, for strong external borders are a prerequisite for a safe and border-free

Schengen area. The Pact therefore highlights the role of Frontex, the EU's border agency, and outlines the deployment of standing corps with a capacity of 10,000 staff. Moreover, the Commission plans to create a predictable solidarity/relocation mechanism specifically after search and rescue missions. This is considered to be a big novelty as, currently, such a coordinated approach does not exist and relocation after disembarkation is conducted on an ad-hoc basis.

The Commission also plans to present a strategy on the [future of Schengen](#) with an update of the [Schengen Borders Code](#) as well as an improved evaluation mechanism.



#### 4. Reinforcing the fight against migrant smuggling

As part of the new pact, the Commission plans to establish an [EU Action Plan against migrant smuggling](#) which would prioritise combatting criminal networks by boosting cooperation in law enforcement. Moreover, by strengthening current employment rules and screening procedures, the action plan would help deter irregular migration by eliminating one of the key incentives and drivers for smuggling to the EU – the easy access to employment.



#### 5. Working with our international partners

Cooperation with international partners is a key cornerstone in each of the legislative and non-legislative initiatives. As a result, the pact plans for a [tailor-made approach](#) ensuring mutually beneficial partnerships with third countries incorporating the following:

- Effective implementation of returns and readmission.
- Strengthening the link between visa issuance and cooperation on readmission.
- Systematic assessments of visa-free countries dependent on irregular migration risks or “abusive asylum applications”.

The pact also pledges to protect those most vulnerable and to target countries with a significant migration dimension through daily support and dedicated instruments. Most notably, establishing Humanitarian Admission schemes, including study/work-related schemes and Talent Partnerships to support legal migration and mobility.

The Portuguese Minister of Home Affairs stated that the proposal for a programme of closer cooperation between the EU and North African countries has “earned a lively support” by other Home Affairs Ministers and that discussions are progressing well.



## 6. Attracting skills and talent to the EU

While the admission of economic migrants remains a national competence, an improved EU level framework could ease to match skills and talents with national needs. The Commission has already launched a public consultation on legal migration to identify areas to be improved and advocated a Skills and Talent package containing :

1. A revised version (to be published at the end of 2021) of the Long-term Residents Directive - allowing Third Country Nationals (TCNs) to obtain long-term resident status and related rights - to improve the respect of intra-EU mobility rights.
2. An evaluation of the Single Permit Directive - merging work and residence permit applications for workers from third countries through a single procedure - to improve the admission procedures for all non-EU nationals’ workers.
3. Develop an EU Talent Pool in the form of a recruitment platform allowing the employers needs to meet skilled third-country nationals.<sup>3</sup>

The Commission, the Council and the European Parliament might also reach a political agreement in the next months on the revision (started in 2016) of the Blue Card Directive (which conditions entry and residence to non-EU highly qualified workers) to find the right balance between national discretion in orienting labour schemes and using effectively EU skills attraction capacities.

<sup>3</sup> OECD, “Building an EU Talent Pool: A New Approach to Migration Management for Europe”, OECD Publishing, Paris, 26 March 2019. Available at: <https://doi.org/10.1787/6ea982a0-en>.

## 7. Supporting integration for more inclusive societies

The Commission has published a [European Action Plan for Integration and Inclusion \(2021-2027\)](#) in November to ensure social inclusion; improve access to employment, skills recognition, health care services (including mental health), culture, sport, housing, education and training. Compared to the [2016 Action plan](#), this version proposes a more comprehensive approach of the integration process, accounting for the heterogeneity of the targeted public (TCNs and EU nationals with an immigrant background) and specific individual characteristics such as gender, youth and religious affiliation.

To ensure efficient monitoring, the Commission will provide the co-legislators with:

- regular reports
- conduct a mid-term review at the end of 2024
- develop an online platform, hosted on the [European website on integration](#), to ensure full transparency on the progress made by Member States.

The Commission also prepares the implementation of a [renewed commitment](#) to the [European Partnership for Integration](#) made in September under which [social and economic partners](#), [employers](#) and [local and regional authorities and civil society](#) are committed to work more closely to provide refugees and migrants with economic opportunities meeting European needs.

The European Economic and Social Committee has expressed its disappointment regarding the limited attention integration has been accorded to in the Pact “lacking ambition and clarity regarding the tools and incentives offered to different stakeholders”.<sup>4</sup>



<sup>4</sup>European Economic and Social Committee, “Opinion on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [COM(2020) 609 final]”, 27 January 2021. Available at: <https://www.eesc.europa.eu/mt/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum>.

## What is the state of the negotiations?

The Pact has reached the preparatory phase in Parliament and the legislative proposals presented as part of the Pact are currently subject to negotiations between the European Parliament and the Council. The Portuguese Presidency has announced a commitment to “bringing the positions of the Member States closer together by the end of the present six-month period”, stating that Member States are very close to reaching an agreement on the new asylum regulations.<sup>5</sup>

Meanwhile, there is growing pressure from academia, international organisations and civil society organisations to conclude the negotiations over the Pact and to adequately address the gaps in the current Asylum and Migration system. Contrary to what the Presidency has announced, many question how long negotiations over the pact will last<sup>6</sup> and believe that the final legislative outcome will be considerably watered-down compared to the original proposals.

In the years since the 2015 Migration Crisis, several international organisations (including the UNHCR and IMO), NGOs and other stakeholders have criticised and even filed legal actions against the EU for the inhumane treatment of migrants at the external borders.<sup>7</sup> Most notably, the practice of pushbacks and the recent accusations<sup>8</sup> against Europe’s Border and Coastguard Agency (Frontex) have brought light to this issue and have made the negotiations on the New Pact significantly more controversial.

Academics and Civil Society groups alike, have criticised the European Union’s approach to migration and asylum management and especially the externalisation of EU policy by cooperation with external partners - specifically Libya and Turkey.

As mentioned, the pact includes a proposal on pre-entry screening of third-country nationals at EU external borders, and while many stakeholders hope that this will help address these potential breaches of fundamental rights, there is overwhelming scepticism surrounding the Pact and its potential to address the issue effectively. Notably, the EESC expressed its disappointment with the proposals accompanying the Pact,

### Key Players

#### Joint Committee Responsible

Civil Liberties, Justice and Home Affairs (LIBE)

#### Committee for opinion

Foreign Affairs (AFET),  
Development (DEVE),  
Budgets (BUDG),  
Economic and Monetary Affairs (ECON),  
Employment and Social Affairs (EMPL),  
Culture and Education (CULT),  
Legal Affairs (JURI),  
Women’s Rights and Gender Equality (FEMM)

<sup>5</sup> Portuguese Presidency of the Council of the EU, “Pact on Migration and Asylum: Presidency committed to bringing Member States even closer together”, 13 March 2021. Available at: <https://www.2021portugal.eu/en/news/pact-on-migration-and-asylum-presidency-committed-to-bringing-member-states-even-closer-together/>

<sup>6</sup> Nikolaj Nielsen, “Deadlock looms over EU’s new asylum pact”, EUobserver, 22 March 2021. Available at: <https://euobserver.com/migration/151299>

<sup>7</sup> Anja Radjenovic, “Pushbacks at the EU’s external borders”, European Parliamentary Research Service, 8th March 2021. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689368/EPRS\\_BRI\(2021\)689368\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689368/EPRS_BRI(2021)689368_EN.pdf)

<sup>8</sup> European Parliament, Press Release “First meeting of the Frontex Scrutiny Group with Leggeri and Johansson”, 3 March 2021. Available at: <https://www.europarl.europa.eu/news/en/press-room/20210303IPR99105/first-meeting-of-the-frontex-scrutiny-group-with-leggeri-and-johansson>

stating they are “insufficient for the development of the common European framework for migration management”.

## Why does it matter?

The Pact takes an innovative approach in that it tries to be comprehensive and address all aspects of asylum and migration governance. At the moment, the EU lacks meaningful channels of legal migration, such as resettlement, complementary pathways, and labour migration programmes. This shortcoming incentivises third-country nationals to reach Europe irregularly and apply for international protection even when they do not meet the requirements to obtain it. As a result, the current system undermines trust between Member States, because the implementation of the Common European Asylum System varies across the EU and each Member State fears that other States might simply not fulfil their obligations and shift their responsibilities onto others. Similarly, this also undermines the trust of asylum seekers in the system and makes them less willing to cooperate with authorities, because they know that their asylum process is likely to be lengthy and full of uncertainties.

In an ideal scenario, the full adoption of the Commission’s proposals might therefore lead to a win-win situation for migrants and asylum seekers as well as for EU Member States. For this to happen, however, it is crucial that the co-legislators’ amendments strike a good balance between the interests of asylum seekers and migrants and the interests of states, especially now that migrant arrivals to the EU are still low.

### Key Facts and Figures - 2019

- Over **70 million** people are estimated to have been displaced worldwide.
- This amounts to nearly **30 million** refugees and asylum seekers.
- Out of those, **2.6 million** have been hosted in the EU (0.6% of EU total population)
- **698 000** new asylum applications were submitted
- **142 000** people tried to cross EU borders without documentation
- Only **1/3** of returns were successfully carried out.

*Source: [Statistics on migration to Europe](#)*