



The new migration and asylum pact: Smoke and mirrors?

by Luigi Scazzieri, 23 May 2024

The EU's new asylum rules are unlikely to make the current system more humane and effective, or less controversial. The EU should rethink its approach to co-operation with third countries.

In April this year the European Parliament [agreed](#) to a reform of the Union's rulebook on migration and asylum, approving the different legislative files that make up the so-called New Migration and Asylum Pact. The Pact was finally [approved](#) by member-states around a month later, in mid-May. It is the result of almost a decade of failed efforts to reform the Union's migration system after the 2015-16 migration crisis, which saw [over 1.6 million irregular arrivals](#) into the EU, many from Syria.

Member-states along the EU's external borders were unable to deal with the influx on their own and allowed migrants to go north to countries such as Germany and Sweden. The EU was eventually able to end the crisis by closing off the Balkan route and by striking controversial agreements with countries like Turkey and Libya to stop migrants from reaching Europe. However, the crisis had a lasting impact on European politics, fuelling anti-immigration populist forces in many member-states and pitting EU countries against each other. For years, reform of the EU's asylum system proved elusive as it seemed impossible to find a balance between the interests of border member-states and other member-states, and between migration doves and hawks.

The pressure to clinch a deal before the European elections in June and signal that the EU had been able to overcome its divisions on migration eventually pushed the Pact over the line. However, the Pact will be difficult to fully implement and is unlikely to make the EU's migration system more humane and effective. It also won't make migration less of a controversial issue between the member-states or in broader political debates. To do all these things, the EU would need to rethink the way it approaches co-operation with third countries, shifting from a focus on migration control to forging genuine partnerships with migrants' countries of origin and transit.

Main elements of the Pact

One of the defining features of the EU's migration rules has been that the member-state of first entry, normally meaning one along the EU's external borders, is responsible for processing most asylum applications. The Pact does not deviate from that principle. However, it makes some significant changes to the old rules.

First, the Pact introduces new asylum procedures that are designed to speed up the processing of asylum claims – which can last years in some member-states and leave applicants stuck in a legal limbo. Under the new rules, people arriving at the EU's external borders or rescued at sea will have to undergo a mandatory [‘screening’ procedure](#). Those with a high chance of being granted asylum, for example because they come from a war-torn country, will be channelled into a standard asylum procedure. Meanwhile, people considered to pose a security risk, who conceal information, or who are originally from countries with a low asylum recognition rate will undergo a so-called ‘border procedure’, meant to last [less than 12 weeks](#) in total. While their applications are being processed, they will not be considered as having entered EU territory, and member-states will have to process their applications close to the EU border – potentially in detention.

Second, the Pact sets out a range of [harmonised criteria](#) to evaluate asylum applications, with the idea of ensuring minimum standards and more uniformity in how member-states assess applications. This includes a range of reasons that member-states can use to argue that applications are inadmissible. For example, an application may be considered inadmissible if, while travelling to the EU, a migrant transited through a ‘safe third country’. The new rules also make it possible for member-states to designate certain [regions of other countries as safe](#). On the whole, the Pact is likely to make it easier for member-states to reject asylum applications.

Third, the Pact introduces a raft of measures to address the issue of so-called secondary movements. This refers to migrants moving around within the EU before their applications have been assessed by the member-state responsible for doing so. There are many reasons why some migrants have chosen to do this, ranging from better chances of being granted asylum to better conditions or personal ties. The Pact introduces new [systems to collect and share migrants’ biometric data](#) and simplifies the procedures that member-states can use to transfer migrants back to the member-state responsible for their application. These measures will make it harder for member-states along the Union's external borders to close a blind eye to migrants leaving their own territory for other member-states before filing an application, or while their application is under review. Therefore, the Pact aims to remove what was de facto an important safety valve for some member-states to deal with large numbers of arrivals.

Fourth, the Pact introduces a set of [solidarity measures](#), a priority for countries along the EU's external borders that can be overwhelmed by the large number of applications. Every year the Commission will propose a pool of solidarity contributions for relocations of asylum seekers from member-states under ‘migratory pressure’ and financial contributions to them. Each member-state has to contribute based on GDP and population, and the Council has to adopt the Commission's proposal for the solidarity pool. Solidarity is mandatory but flexible. For example, a country may offer operational assistance, take in some migrants from a border member-state, or contribute to paying for the cost of migration-related staff or facilities. Each relocation refused ‘costs’ €20,000, to be made up through financial or practical assistance. However, there is an EU-wide [minimum](#) annual relocation quota of 30,000 from countries under pressure.

Shortcomings of the Pact

Following the adoption of the Pact, there will be a two-year transition period until its rules are supposed to come fully into force. Implementing the Pact will not be easy. Member-states along the external borders will need to make substantial investments in building up their reception facilities and administrative capacity to process asylum applications more quickly. Many provisions of the Pact will be controversial. Border countries will need to process asylum applications more quickly, and it will be harder for them to turn a blind eye to secondary movements. Compared to the additional burdens the Pact places on border member-states, the solidarity measures seem thin, not least as it seems likely that most other countries will opt for financial solidarity rather than taking in asylum seekers on their own territory. Moreover, Poland and Hungary have made clear that [they reject relocations](#) as a matter of principle and the coalition programme of what will likely be the next Dutch government says the Netherlands would [seek an opt-out](#) from the Pact.

The fact that the solidarity measures in the Pact are limited means that countries along the border will have little incentive to fully implement many of its provisions. For example, some countries may see little point in investing in making their reception centres function better when that would only make it legally easier for other member-states to return migrants to their territory. The same may be true for obligations to channel large numbers of migrants towards a border procedure and keep them in controversial detention facilities, rather than allowing them to freely move to another member-state. All this suggests migration politics will continue to be a source of friction between member-states.

A second shortcoming of the Pact is its external dimension. Even if the EU managed to set up a system to process asylum applications more quickly, it will continue to struggle with returns. Returns are not only a matter for EU authorities, as it is not possible to return an individual to a given country without co-operation from that country's authorities. Processing applications more quickly will only lead to a build-up of individuals stuck in a limbo unless returns can be made to work better. Many countries, for example in Africa, lack the administrative capacity to deal with returns effectively and often have little incentive to co-operate, as it is unpopular to look like the EU's migration enforcer. To illustrate the scale of the issue, [according to Eurostat](#), in 2023 430,560 non-EU nationals were ordered to leave but only 110,960 did so. The low rate of return contributes to fuelling public opposition to migration, both legal and irregular.

The Pact's third shortcoming is that it will fail to make the EU's migration system more humane. The additional burdens that the Pact places on border countries, combined with the lack of solidarity and the difficulty in implementing returns means that border member-states will continue to have an incentive to keep their borders near-shut, preventing people from lodging asylum applications. This could include carrying out illegal pushbacks at their land and sea borders. Border member-states may also continue to hold migrants in sub-standard conditions as a deterrent – as has for example been the case with reception centres on Greek islands.

Member-states seem aware of the Pact's shortcomings, at least when it comes to considerations of reducing the number of arrivals. Now that the Pact has been adopted, many member-states are [trying to advance](#) the idea of further externalising migration controls, for example by sending asylum-seekers to non-EU countries to have their claims assessed. The core idea – inspired by the UK's Rwanda scheme – would be to deter migrants from making journeys to the EU in the first place. Proposals relating to external processing have been around for years and are fraught with legal difficulties. They are also difficult to implement as it is difficult to find non-EU countries that are willing to take on the burden

of processing significant numbers of applications in the EU's place. The whole debate around external processing will remain useful to leaders who want to look tough on migration, but any such schemes are likely to remain small in scale – if they ever get off the ground.

Is there an alternative?

To address its migration conundrum, the EU needs to rethink its approach to partnerships with migrants' countries of origin. More intra-EU solidarity would be very helpful but, on its own, is unlikely to be sufficient as returns would remain very challenging. The problem with the EU's current approach is that migration is seen as a problem rather than a complex phenomenon that the EU and partner countries should handle together. The Union faces a bleak demographic future and [needs millions of migrants](#) to make up for an ageing population and to maintain its welfare model. To be politically acceptable however, this needs to happen in a managed and orderly way. Meanwhile, the Union's partners want financial assistance, greater market access to Europe, economic investment, technical know-how, and migration and education opportunities for their citizens.

The challenge is tying this together into a coherent package, of which migration is just one part. The EU could present its partners with an offer that included more legal migration opportunities, enhanced access to the EU market, investment and technical assistance, in exchange for good co-operation on returns. In essence that is precisely what the EU does with countries in the Western Balkans, which have fairly high return rates (i.e. [40 per cent for Albania](#); 50 per cent for Montenegro; 51 per cent for North Macedonia and 57 per cent for Serbia).

In theory, the EU has tried to follow such an approach since 2016, when the Council endorsed a [Commission proposal for a new partnership framework with third countries](#). Packages along these lines would give partners a greater stake in migration co-operation with the EU and foster the sense that migration is a shared interest, and only one part of a bigger relationship.

However, the Union has struggled to implement such policies. Visas for legal migration pathways are in the hands of the member-states, and the Talent Partnerships spearheaded by the Commission have been [too small and underdeveloped](#) to make an impact. Many member-states also oppose measures that would give countries of origin and transit greater access to the EU market, which remains difficult to access not due to tariffs or quotas but because of regulatory requirements such as sanitary regulation and technical standards. Overall, the EU's offer essentially remains limited to ad-hoc injections of cash, in large part targeted at strengthening the border management and security forces of partners. Member-states have followed the same approach in their bilateral dealings with partners. But this creates limited buy-in from partner countries and gives them an incentive to constantly raise the price of co-operation, given that their interest is mainly in EU funds rather than more comprehensive.

In theory, the EU has also tried to use 'sticks' to push partners to co-operate more, for example by threatening to make visas or funding conditional on co-operation. In practice however, this has proven difficult to do. There are [few instances where the EU is willing and able to align all its member-states' interests and use its full collective leverage](#) to pursue migration-related goals, as that could jeopardise some member-states' bilateral relations and objectives, create instability or undermine other EU policy aims, such as poverty alleviation.

Convincing the member-states that they need to be less protectionist and that they should be more open to legal migration won't be easy. However, a revamped partnership package would be the best

guarantee of a better functioning and more humane migration system. At a time when Europeans fret about losing influence to the likes of China in much of the so-called 'Global South', revamped partnerships would serve to increase their influence there. And, by injecting more control and predictability into migration flows, such partnerships would make migration less controversial, and therefore help secure Europe's future prosperity.

Luigi Scazzieri is a senior research fellow at the Centre for European Reform.