

Opinion – A New Pact on Migration and Asylum in Europe

Written by Monika Kabata

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MONIKA KABATA, OCT 9 2020

The European Commission's (EC) New Pact on Asylum and Migration has been launched under the fifth priority of the EC's 'Promoting our European Way of Life' programme and is a response to the flaws in the system that have been visible during the so-called "migration crisis". The increased influx of migrants in 2015 led to serious tensions between member states. One of the main problems relates to the functioning of the Dublin System according to which asylum seekers should lodge their application in the first country of entry, which puts particular pressure on the southern member states. With large numbers of irregular migrants arriving, some of these countries have been unable and sometimes unwilling to fulfil their obligations of protecting the border and examining the asylum applications.

The situation commonly referred to as a "crisis" required common response and solidarity from all member states. However, not all of them felt responsible. While the EU was working on relocation schemes and quota system, some countries were openly opposing any EU decision in this matter. The Visegrad Group, and especially Poland and Hungary who haven't relocated any of the refugees that have been assigned to them, became the strong opponents of mandatory relocations. Their failure to comply with the EU decisions resulted in the European Commission taking them (and the Czech Republic) to the European Court of Justice (ECJ). In April this year, the ECJ has ruled that they have breached their obligation under the EU law.

The release of the new Pact has been met with mixed reactions. While Ursula von der Leyen (President of the European Commission) has defined it as 'a human and humane approach', Dutch MEP, Sophie in't Veld, said that '[t]he far right has captured EU migration policy'. Furthermore, organisations such as Amnesty International have been rather disappointed with the new Pact, claiming that it is 'designed to heighten walls and strengthen fences'. But what does the Pact actually include? It consists of nine instruments including five legislative proposals that concern mainly screening, asylum procedures, Eurodac and solidarity mechanisms. One of the main proposals is a mandatory pre-entry screening of all third-country nationals that would include health and vulnerability checks, identity checks, the registration of biometric data and security checks. These checks should take place within five days of arrival and separate those who are seen as unlikely to receive asylum from those with a better prospective to receive it. In the first case, a third-country national would be put into a "fast track" border procedure and in case of rejection, returned to the country of origin. In the second case, it would be decided which country should be responsible for examining the asylum application based on the asylum seeker's family ties, place of work or studies, or the country that issued the visa. This is a major difference to the Dublin System.

Among other Pact proposals, there is a monitoring system that would ensure respecting human rights and the principle of non-refoulement, more focus on international partnerships with countries of origin, transit and host countries as well as an expansion of use of the Eurodac database. The most controversial one is, however, the solidarity mechanism. Ursula von der Leyen has stated that 'It is not a question whether Member States should support with solidarity and contributions, but how they should do it'. Following this, the Pact gives the member states three options: to relocate migrants, to sponsor their return or to offer operational support. In the first case, a member state would receive a financial contribution from the EU budget for relocation. In the second case, if a member state would fail to return a person within 8 months, then this person would be transferred to that member state and the

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process of return would continue there. In the third case, a member state who has offered operational support, would have to contribute through relocation or return sponsorships as well if there would be a need for a “critical mass correction mechanism”. This mechanism could be triggered in case of a shortfall in relocation/return sponsorship.

During the so-called “migration crisis” the Polish government widely criticized the actions taken by the EU. This Polish resistance to the European actions found support in the Visegrad Group (V4) which was chaired by Poland in 2016–2017. In a Joint Statement from September 16, 2016, the V4 has expressed concern about the ‘decreasing sense of security among (...) citizens’ and in order to improve it, backed strengthening of Frontex and improving the interoperability of the EU databases. Further, they supported cooperation with third countries to protect borders but in regards to the relocation scheme, they stated that ‘migration policy should be based on the principle of the ‘flexible solidarity’’, what means that member states should be able to decide about the way they want to help and do so voluntarily. Indeed, the Polish government and politicians from the ruling party have many times declared that they are ready to help but only financially. A few months later, in the Joint Statement of November 16, 2016, they presented their objective to regain control over the borders by:

- i. providing assistance to third countries hosting large numbers of migrants;
- ii. supporting effective processing of asylum claims, including by tackling the phenomenon of the abuse of international protection for the purpose of unjustified illegal entry into the EU; as well as
- iii. improving return and readmission rates of migrants not eligible for international protection in the EU’. In the same document, they have also again rejected the permanent relocation mechanism. When comparing the proposals included in the New Pact and V4’s claims from the so-called “migration crisis”, various similarities become apparent: expanding databases, cooperation with third countries, faster returns and readmissions and better controls on the borders. Further, both sides also propose a “flexible solidarity”, but whereas V4 opted for a voluntary system, the European Commission proposed a mandatory one.

Considering the recent events in the Moria Centre, that is the fire in the refugee camp that left thousands of refugees and asylum seekers without shelter, some could expect member states to be more willing to work towards a coherent approach to migration policies. However, despite the ECJ’s ruling from April and the current relation between Poland and the EU (the disagreements over the state of the rules of law in Poland) the Polish President, Andrzej Duda, has announced that he won’t agree to any relocation of refugees/migrants to Poland (which according to new Pact, would take place in case of a failure to return of migrant or when triggering the critical mass correction mechanism), as it would mean imprisoning free people.

Polish and Hungarian Prime Ministers, Mateusz Morawiecki and Viktor Orbán, share a similar point of view in this. The spoke person of Orbán has in fact claimed that the new Pact still includes a quota but under a different name and this won’t be accepted by Hungary. This objection towards a mandatory relocation system has been already voiced by the V4 (joined by Estonia, Latvia and Slovenia) in June 2020 in their letter to European Commission Vice-President Margaritis Schinas and Commissioner Ylva Johansson. Even though the New Pact can be seen as a step towards a compromise on the part of the European Commission, countries such as Poland and Hungary are unlikely to abandon their position that has been so important to their electoral stances.

The new Pact on Migration and Asylum will face many challenges. It will have to be approved by the European Parliament and Council of the European Union. That process will be surely contentious. However, migration to Europe won’t stop and the member states, sooner or later, will have to agree on the direction of migration policy.

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