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The EU's Answer to the Migration Crisis

The Road to the New Pact on Migration and Asylum[2]

Over the past decades, the Member States of the European Union have increasingly become migration destination countries. This trend was reinforced by the migration and refugee crisis of 2015–16, which forced the European Community to reform its migration policy. However, reforming this policy area of shared competence has been more challenging than expected. The Council of the European Union adopted the New Pact on Migration and Asylum in May 2024. However, this act was a long time in the making and the undertaking is far from complete. This study, based on a literature review and document analysis, examines the process leading to the creation of the New Pact up until the decision of the Council of the EU.

Keywords: European Union, New Pact on Migration and Asylum, shared competence, migration policy, provisional agreements

Introduction

The Council of the European Union (EU) approved the New Pact on Migration and Asylum on 14 May 2024.[3] This landmark event is an important milestone for the EU to establish its common system to manage migration. The EU became aware of the pitfalls of its migration and asylum system during the 2015–16 migration and refugee crisis. During the last decade the community has seen an unprecedented number of migrants both irregular and legal who crossed the EU's external borders *en masse*. The figures reached as high as 1.3 million in 2016 and did not grow significantly further only because of the so-called EU–Turkey deal.[4] It was quickly recognised that the EU's existing migration and

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3   Council of the European Union 2024.
4   Eurostat 2017.

asylum system could not handle the situation at hand, thus the reform of the Common European Asylum System (CEAS) was started.

Europe however was not quite the region of destination as it is now for a long time. The origins of contemporary international migration can be traced back to the end of the Second World War, when new, cheaper methods of transportation made long-distance migration more affordable and available for the masses. Further technological improvements, especially in the 1990s, made it significantly easier to keep in touch with family members left behind, which also contributes to the increase in long-distance, inter-continental migration.[5]

Europe became a region of destination accordingly in the 1950s, when West Germany and France started to recruit foreign workers to satisfy the labour demand of their rapid industrial expansion and the shift to new mass production methods. In the 1970s the economic developments in Italy, Spain, Portugal and Greece transformed these countries into labour importers too.[6]

After the era of migration recruitment, a sharp growth in refugee and irregular migration occurred in the 1980s.[7] From this decade, refugee migration also had more and more individuals who were not qualifying as refugees according to the 1951 Geneva Convention,[8] thus remaining asylum seekers.[9] Besides the transformation of the migration flows towards Europe, its scale started to grow as well, transforming most of the EU countries, including Cyprus, the Czech Republic, Hungary, Slovakia and Slovenia to destination countries by 2006.[10] Europe was reluctant to accept its newly assumed position as a migration destination area. This resulted in political tensions on how to address migration. While labour migration to the EU was considered needed not just because of the declining population, but for its economic benefits, refugee and irregular migration was rather unwelcome in the Community.[11] With the political tensions came different solutions, and the appearance of the expression *Fortress Europe* in the early 2000s.[12]

Restrictive policies in asylum systems were introduced since the 1973 oil price shock, although at a different rate in varying Member States,[13] ranging from the complete abandonment of the 1951 Geneva Convention, through special accelerated processes to assess asylum applications to rules on safe third countries.[14] The foundations of the EU's New Pact on Migration and Asylum of 2024 can be traced back to the 1990s, when with the Treaty of Maastricht the newly established EU called for a common migration procedure.[15]

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[5]   CASTLES et al. 2014: 5.
[6]   MASSEY et al. 1998: 108–109.
[7]   KING 2002: 96; BOSWELL 2006: 92; KESERŰ–GLIED 2014: 250.
[8]   "Owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." UN 2010: 14.
[9]   KING 2002: 96.
[10]   BOSWELL 2006: 92–93.
[11]   BOSWELL 2006: 91.
[12]   KING 2002: 94.
[13]   KESERŰ–GLIED 2014: 246.
[14]   BOSWELL 2006: 99–100.
[15]   VECSEY 2019: 145–146.

The EU's migration policy changed tremendously since the 1990s, however traits of solutions implemented in previous decades re-emerged. The development of the EU's migration policy is tackled in the article to capture how the New Pact on Migration and Asylum came to existence in its current form. Migration policy evolved in consecutive waves, the first ended by the shock of the so called migration and refugee crisis of 2015–16, and the third starting with the term of the incoming European Commission in 2019. Thus, these milestones form the structure of the article.

Migration control for business as usual

One of the most important internal security *aquis* of the EU, which was created in 1990, was the Dublin Convention. The Convention was the first of its kind, contributing mainly to the asylum system with regulating border control, irregular migration and asylum.[16] The Convention entered into force in 1997, when the Treaty of Amsterdam was signed. It outlined the basis for the succeeding documents. In its Article 1 it listed the definitions, only seven of them starting with such as applicant for asylum, which reads as the following: "an alien who has made an application for asylum in respect of which a final decision has not yet been taken". Besides this, residence permit, different visa types were also defined. Article 2 states that the EU will take action in accordance with international law with no geographical restrictions. Article 3 of the regulation determines the principles on the asylum procedure. These include the most important ones, such as one Member State examines an application at a time, every Member State is eligible to examine applications, or cease any case if the applicant leaves the EU for three or more months. Articles 4 to 9 then discuss the hierarchy of which Member States are responsible to examine an asylum application.[17] The first Dublin Convention was 12 pages altogether. It clearly built up the mechanism for *business as usual,* and not for the dramatically increased figures of 2015. While it was protecting the Schengen Area at its external borders, the Dublin Convention was lacking burden sharing and equal distribution of costs.[18] The criteria for determining which Member State is responsible for examining an asylum application put additional pressure on countries along the EU's external borders. Nevertheless, the Convention was only revised in 2003.

At the same year when the Dublin Convention entered into force, EU Member States signed the Treaty of Amsterdam. The treaty set out a five year long timeframe to the EU to adopt multiple measures for a more coherent European migration control and prevention. The following measures were among the requirements: the prevention and combat against crime-related border crossing, safeguarding the rights of third country nationals, cooperation in the fields of jurisdiction, administration and policing.[19]

The institutionalisation of migration control and prevention continued with the Tampere Programme in 1999. The five year long programme intended to build coherence

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[16]   Thielemann–Armstrong 2013: 148–149.
[17]   European Communities 1990: 3–7.
[18]   Thielemann–Armstrong 2013: 149–150.
[19]   European Union 1997: 28.

not just among the different national, but also between the internal and external policies.[20] The conclusions called for "a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit".[21] The programme's first priority was the establishment of the Common European Asylum System (CEAS), which would introduce restrictions for third-country nationals, strengthen external border controls and address irregular migration among others.[22] The Tampere Programme addressed both schools on EU external action towards migration. The first, repression is represented in the initiative to strengthen external border controls, while the second, prevention is achieved through addressing development in countries of origin.[23]

The development of the CEAS started accordingly after its introduction by the Tampere Programme of 1999. The EU incorporated the existing regulations as the Dublin Convention to the system. The CEAS aimed to harmonise national procedures and set the minimum standards for asylum.[24]

The Treaty of Nice made only little and limited progress, since it either did not change migration and asylum related articles, or the change was conditional to unanimous acceptance by the Member States to switch to qualified majority vote.[25] The Treaty of Nice, just as the Treaty of Amsterdam before it, set out a five-year long timeframe to formulate asylum mechanisms, and common minimum standards for asylum.[26] In this multiannual program on developing the common migration policy, security gained more focus. The unprecedented terrorist attacks on 11 September 2001 led to an increased attention to third countries which have chosen not to cooperate to combat illegal migration.[27]

In 2003 the Dublin Convention was revised and took the form of a Regulation. The second Dublin Regulation (Dublin II), however grew in length, did not come with significant changes.[28] The regulation kept the general order of criteria, complementing it with articles on unaccompanied minors, added paragraphs to the article on already residing family members, articles on visa and residence permit, including measures if fraud was committed, an article on application for asylum lodged in an international transit zone and an article on the multiple family members parallel applications. For these reasons the definitions section of the regulation got longer than in the original Dublin Regulation. It also introduced new terminology, for example, changing the earlier used *alien* to *third-country national*. Due to the wider scope of criteria that the regulation established, it needed to define such terms as *unaccompanied minor* and *family*. As a new idea, taking charge and taking back measures were introduced in the regulation. It obliged Member States to take charge or take back any applicant whose application for asylum according to criteria falls on them, or it was requested by another Member State. The regulation

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20   European Council 1999.
21   Boswell 2006: 105.
22   Murphy–Arcarazo 2014: 5.
23   Boswell 2006: 104–105.
24   European Commission 2020a.
25   Niemann 2012: 222.
26   European Parliament 2017: 3.
27   Tardis 2018: 10.
28   Costello–Mouzourakis 2017: 269.

further elaborated the information exchange and communication cooperation among Member States with respect to applicants for asylum and to general trends.[29] According to Dublin II, the Member State responsible for examining an application for asylum will be mostly the one where the applicant first lodged their application and entered the territory of the EU, save a few exemptions. The disproportional burdens of the Member States in external border areas remained one of the major structural problems of the CEAS.[30]

The development of the CEAS continued with the acceptance of the minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.[31] The Frontex Agency, responsible for the management and coordination of operational cooperation at the EU's external borders was established in 2004,[32] which strengthened the initiatives under the repressive school of EU external action on migration.

In the meantime, the Tampere Programme came to an end. Replaced by the Hague Programme in 2005, the formulation of the CEAS continued in its second phase, with the aim to adopt the remaining instruments until 2010. This objective however remained only partially fulfilled, and thus the completion of the CEAS was delayed.[33]

In the meantime, the EU adopted the Treaty of Lisbon, which included significant changes on European migration and asylum policies. The treaty encapsulates external dimensions of migration control, as it tied EU policies to third countries. Moreover, the Treaty of Lisbon further emphasised the need for the CEAS.[34] The formulation of the common policy must comprise: a uniform status of asylum and subsidiary protection, a common system of temporary protection, common procedures to grant and withdraw of protection status, criteria and mechanism to determine the Member State responsible for examine asylum applications, standards of reception conditions and partnership and cooperation with third countries.[35]

While the creation of the CEAS was still in full swing, the Council of the European Union accepted the European Pact on Immigration and Asylum in 2008. The Pact had an influence on the CEAS as well, since it shifted the ambitious deadline of 2010 to 2012 for setting up the system.[36] The Pact also outlined five priority areas, which were to be translated to actions. These areas were the organisation of legal migration, control illegal immigration through return, making border controls more effective, the construction of a Europe of asylum, and creating partnerships with encouraging migration and development in countries of origin.[37] The priorities again were revealing about how the EU approached migration and asylum. The Pact showed a more conservative picture, in line with the political and public attitude, heralded by the tensions originating from the

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[29]   European Council 2003: 2–8.
[30]   Costello–Mouzourakis 2017: 283.
[31]   European Council 2004.
[32]   Friedery–Molnár 2024: 124.
[33]   Collett 2008.
[34]   Triandafyllidou–Dimitriadi 2014: 151.
[35]   European Parliament 2024.
[36]   Angenendt–Parkes 2008: 77, 90–91.
[37]   Council of the European Union 2008: 4.

1990s. Migration control gained momentum, and elements of repression and prevention dominate the priorities, further strengthening the Fortress Europe approach towards migration.[38]

A new multiannual programme was signed in Stockholm for the period of 2010–2014. The creation of the CEAS was listed as a top priority of the programme. The document underlined the importance of the EU remaining an area of freedom and it is open to refugees. Moreover, the Programme deemed it important to create flexible admission systems for legal migrants, since the EU is in need of continuous flows of immigration.[39] In parallel with this, the Stockholm Programme also intended to strengthen border controls to prevent irregular migration.[40] Further objectives of the programme included the maximisation of the positive effects of migration on development, and in parallel the minimisation of its negative effects. Thus, migration prevention was again in the focus through cooperation with countries of origin and transit. To strengthen the idea of an area of freedom and justice, integration of third-country nationals considered important. The programme also identified the growing number of unaccompanied minors, illegal migration and the refugee status as key issues to address.[41] Despite the EU's rhetoric on being open to refugees, the Stockholm Programme did not define the conditions for asylum, and legal pathways to access protection to eligible individuals were never created.[42]

The CEAS, in contrary of the expectations, and the combined effort of the multiannual Programmes (Tampere, the Hague and Stockholm) and the European Pact on Immigration and Asylum was not adopted in 2012. The adoption of the CEAS, which finally took place in 2013 occurred during a time already foreshadowing future hardships. After the Arab Spring, a growing number of migrants from the south arrived to the EU, which induced the reform of Dublin II.[43] The revised Dublin Regulation (Dublin III) was adopted in 2013. Dublin III grew significantly both in length and content compared to the Dublin Convention.[44] The issues raised by the Stockholm Programme were addressed in the new regulation, however the main problem caused by the uneven distribution of responsibility (the Member State of first entry remained mostly eligible for examining asylum applications) persisted. Despite the looming crisis, the EU did not include provisions for the case of emergency, such as increased numbers of asylum applications.[45]

The crisis of the European migration policy

The European Commission led by Jean-Claude Juncker started its term on 1 November 2014. In reaction to the black clouds gathering over the skies of the EU, the Juncker

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[38]   Boswell 2006: 104–105; Collett 2008; Moreno-Lax 2014: 154–155.
[39]   Arcarazo 2011: 70.
[40]   Moreno-Lax 2014: 149.
[41]   European Council 2010: 27–33.
[42]   Moreno-Lax 2014: 149.
[43]   Vecsey: 2019: 149.
[44]   European Council 2013.
[45]   Vecsey 2019: 150.

Commission identified migration as one of the 10 priority areas to address.[46] This can be considered as a reaction to the fluctuating number of detected irregular migration to the EU, depicted in Figure 1, sharply increasing to 140,989 in 2011.[47]
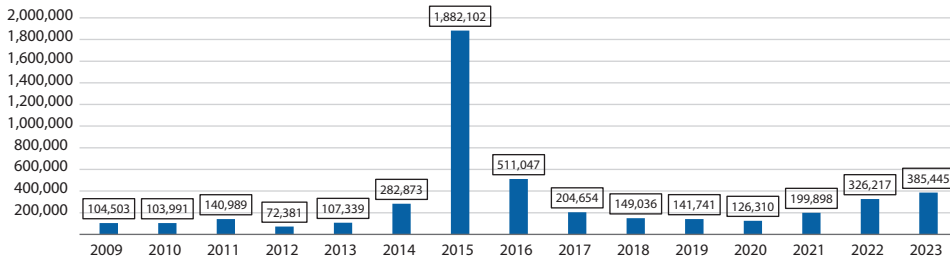

Figure 1: Detected irregular arrivals between 2009 and 2023

Source: compiled by the author

The Commission also pledged to continue the implementation of the CEAS and set itself a goal to formulate a new migration policy. In order to create a new policy, four areas of action were listed: the implementation of the common asylum policy, a new policy on legal migration, the release of a Communication on internal security strategy and taking operational measures to fight terrorism and counter radicalisation.[48] Accordingly, a 10-point plan was released in April 2015 to reach the objectives. The first related document, the European Agenda on Migration (EAM) was released in May 2015, signalling the consensus among Member States.[49]

The EAM firmly acknowledged that migration is a natural and complex phenomenon. The document also called for the abandonment of the previous practices of focusing on diverse types of migration flows. The EAM also confirmed its statements in the Stockholm Programme, to provide an area of freedom and justice to legal migrants and refugees.[50] Despite the positive narrative of the document, the actions listed in the EAM were more in line with the previous political agenda, promoting migration control and prevention, with the budget enhancement of Frontex operations, and strengthening of the border management component in existing EU Common Security and Defence Policy missions. This trend quickly became evident from the document as well. For example, the EAM claimed that the root causes of migration must be addressed, and to tackle irregular migration, Frontex must be reinforced and its legal basis amended.

Meanwhile migration to the EU peaked in 2015 with almost 885,000 irregular arrivals on the Eastern Mediterranean route and a consistent number of arrivals ranging between 153,000 and 185,000 since the second half of 2013 in the Central

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46   Gotev 2014.

47   Frontex 2024.

48   Gotev 2014.

49   Debyser 2015: 8.

50   European Commission 2015a: 1–10.

Mediterranean route.[51] These two figures and the unequal share of Member States in the crisis have made it clear that the Dublin III Regulation is only sufficient to deal with average migration pressures. The administrative pressure on frontline Member States from then on was only handled with *ad hoc,* reactionary actions, which could not address the emerged issue adequately in the long term. To add to the problems, tensions grew among Member States, and consensus was, in some cases, unachievable. Such a case was the establishment of a temporary relocation mechanism in September 2015. The two beneficiary countries of these measures were Italy and Greece. The documents earmarked the relocation of 40,000 then 120,000 migrants in need of international protection from these countries. The first provision indicated that the Member States should execute the relocation in a voluntary manner. The second provision, however, was mandatory, which defined the number of migrants to be relocated per Member State for clarity and to enhance solidarity.[52] On establishing the temporary measures, Finland abstained from the vote, the Czech Republic, Hungary, Romania and Slovakia voted against the temporary provisions.[53]

Besides creating measures to address internal problems, the EU also created the Valletta Action Plan in November 2015. The main focus of the Action Plan was the southern dimension of migration, thus movement from Africa was addressed through it. The Action Plan mainly focused on the prevention of migration outside the EU's borders with addressing the root causes of migration and focusing on development.[54]

The number of irregular arrivals remained elevated in 2016: exceeding 180,000 people on both the Central Mediterranean and the Eastern routes.[55] The EU took care of the Eastern route with the help of Turkey. The EU–Turkey Statement of 18 March 2016 ensured the rapid return of irregularly arriving migrants to Turkey. In place of the returnees, Syrians were pledged to be resettled in the EU. Moreover, Turkey got a 3 billion EUR worth of support from the EU for its refugee system.[56]

The different action plans and agreements masked the real problem, the unpreparedness of the CEAS to receive masses of migrants at the EU's external borders. Thus, the Commission decided to revise the CEAS, only adopted in 2013, as a clear sign of the problems with it. The CEAS had multiple systemic and fundamental issues to deal with. First of all, its approach was protectionist, instead of the protection of those in need.[57] Secondly, however the EU claimed it to be a common system, the CEAS only defined the minimum standards for asylum, which can be overruled by higher standards in national policies. Thirdly, the pitfalls of the Dublin system created an environment which inherently encourages irregular migration.[58] Dublin III, after the two revisions still mainly considered the first country of entry responsible for the examination of asylum applications, creating immense and unsustainable burdens to the countries in question.

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[51]   European Council 2024a.
[52]   European Council 2015a; European Council 2015b.
[53]   BBC 2015.
[54]   European Commission 2015b.
[55]   European Council 2024a.
[56]   European Council 2016.
[57]   LAVENEX 2018: 1201.
[58]   LAVENEX 2018: 1204; COSTELLO–MOUZOURAKIS 2017: 273–278.

While Greece and Italy would have had hundreds of thousands of applications to assess, twenty countries from the EU would have remained free riders of the system. This disproportionality created evasion strategies both from Member State and migrants. Member States opted for selective fingerprinting to the waving through migrants. From the other perspective, entering the EU unnoticed (by the authorities) became desirable, and irregularly crossing internal international borders to avoid detention.[59]

The European Commission intended to remedy the flaws of the CEAS through adopting new legislative elements. One of these was the much needed reform of the Dublin Regulation, the adoption of a new entry-exit system, the creation of the European Union Agency for Asylum and the reform of the Eurodac system.[60] In a second package of proposals the replacement of the Asylum Procedures Directive and the Qualification Directive with a Regulation and the reform of the Reception Conditions Directive was listed.[61]

From the 42 proposals submitted by the Juncker Commission, 24 were adopted and 7 were proceeding slowly or were blocked entirely until April 2019. The wanted and the reform of the CEAS was a little bit more than halfway through when the new European Commission took over in 2019.[62]

The formulation of the new pact on migration and asylum

In 2019, when the von der Leyen Commission took office, a fatigue regarding the migration topic was palpable. The migration pressure was significantly lower, only 120,000 people arrived to the EU through the three main Mediterranean routes.[63] This created a situation of out of sight, out of mind,[64] and the reform of the CEAS, however ongoing, has been dropped out from the priorities.[65] To give a new impetus to the reform of the CEAS, the New Pact on Migration and Asylum (New Pact) was launched in 2020, under the fifth priority of Promoting the European way of life. The new reform package included mainly the same elements as the 2016 one, and the Commission stated that they are continuing the process started by the Juncker Commission.[66] The main lines of the reform revolved around two topics, the strengthening of the EU's external borders and the modernisation of the common asylum system.[67]

The firstly mentioned key action, which is the "robust and fair management of external borders, including identity, health and security checks"[68] indicates that the protectionist approach towards migration control did not change within the EU. Migration, despite the sharply decreasing figures is still viewed as a security threat to the integrity

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59   COSTELLO–MOUZOURAKIS 2017: 283–285.
60   European Commission 2016a; BASSOT–HILLER 2018: 27.
61   European Commission 2016b.
62   BASSOT–HILLER 2019: 26.
63   European Council 2024a.
64   LAVENEX 2018: 3.
65   European Commission 2019.
66   European Commission 2020b: 1–2.
67   BASSOT 2020: 7–8.
68   European Commission 2020b: 1–2.

and internal security of the EU. With reinforcing external border control, legal channels of migration will likely to narrow one again, and the *Fortress Europe* image is emphasised.

Besides the strengthening of the external borders, the proposal on the New Pact identified the following issues to be addressed via the reform. The simplification of the asylum procedure, recognising the positive effects of migration and steps to promote the latter. The New Pact went on to advocate that the root causes of migration must be addressed through effective cooperation with third countries. Lastly the New Pact aims to address cross border criminal activity related to migration, for example human trafficking and smuggling.[69]

Within this scope, the implementation roadmap of the new pact outlined 41 proposals towards the reform of the CEAS with a rather ambitious timeframe. The roadmap envisioned the launch of the New Pact at the end of 2021.[70] Of the 41 proposals, nine refer to legislative changes, five to legal instruments, three to recommendations and one to a guidance document. The five legal instruments were the proposal of a new screening regulation; an amended proposal revising the Asylum Procedures Regulation, known as Dublin Regulation; an amended proposal revising the Eurodac Regulation; a new asylum and migration management regulation and a new crisis and force majeure regulation. The three recommendations include a new migration preparedness and crisis blueprint, a new recommendation on resettlement and complementary pathways and a new recommendation on search and rescue operations by private vessels. This latter is also supported by a guidance to Member States that rescue on the sea cannot be criminalised. The new guidance introduced within the pact is on the Facilitators Directive.[71]

Within the Promoting the European way of life priority of the von der Leyen Commission, 27 proposals of the 41 had been submitted by December 2021. Of these proposals, 17 is proceeded normally, 4 slowly, 1 is blocked and 5 were adopted in December 2021 as visible on Figure 2.
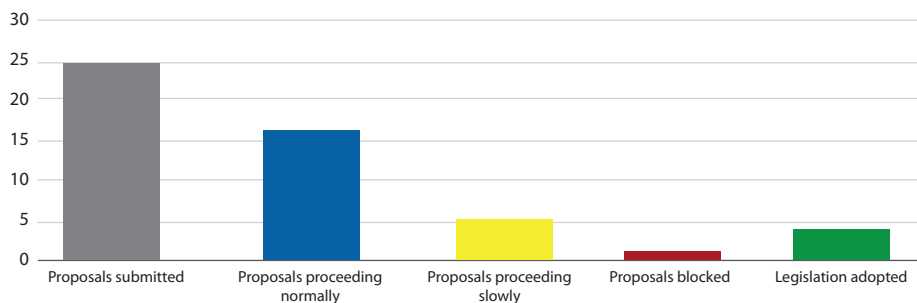

Figure 2: Legislative delivery on the New Pact on Migration and Asylum in December 2021
Source: compiled by the author

69　　　European Commission 2020b: 1–28.
70　　　European Commission 2020c.
71　　　Cornelisse–Campesi 2021: 1.

Until the end of 2021, the landscape regarding the reform of the CEAS has not changed significantly and the ambitious timeframe set by the Commission was not feasible. The topic was forced into the background by multiple issues, some of which needed immediate response, for example, the Covid–19 pandemic. Attention to migratory issues also decreased due to the fact that the number of irregular arrivals had been reduced by 90% since 2015.[72] Despite the articulated importance of solidarity stressed through the process so far, the little advance was the by-product of unchanged and differing national approaches on migration. While multiple proposals were adopted through 2021, and continuously until December 2023, the reformed Dublin Regulation, the main pillar of the CEAS was only agreed on provisionally, together with eight other important documents, like the Eurodac and Qualification Regulation.[73]

Four proposals were adopted in the framework of the New Pact on Migration and Asylum. One of these is the EU Blue Card Directive for highly qualified third country nationals and their families. The directive highlights that it is not applicable for those who are seeking international protection,[74] thus the Blue Card directive does not contribute to the migration policy debate on irregular migration. Most probably the directive was approved by the Member States because of its detachedness from the above-mentioned subject.

The second proposal adopted in 2021 considered an agency, the EU Agency for Asylum (EUAA). It was not the establishment of a new agency, but the renaming of the existing European Asylum Support office (EASO). The EASO's core task was to help Member States in the implementation of the CEAS. The revision of the EASO became important when the 2015–16 migration and refugee crisis forced the agency to take practical steps on the ground and conduct entire asylum procedures up to the decision on the cases. The reform of the CEAS provided an opportunity where the discrepancies between the regulation and the practice could be rectified. The original proposal aimed for a mandate which allows an autonomous operation for the EUAA in the Member States, however this objective was not fulfilled on the 2021 adoption of the new regulation.[75] Although the EUAA can provide operational and technical assistance,[76] the original aim of the reform was not fulfilled, and the already assumed role of the agency still depends on the interpretation of its mandate.[77]

A new role was also created in the framework of the New Pact at the European Commission's Directorate General for Migration and Home Affairs to deal with return policy. The EU Return Coordinator harmonises EU return policy and support its coherent implementation and establishes a common EU system for returns.[78] The new role, again adds to the EU's *Fortress Europe* approach to migration, since those who reached the territory of the EU, although their status is irregular, are returned to their country of

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[72]   European Council 2024b.
[73]   European Commission 2024a.
[74]   European Union 2021.
[75]   Ekstedt 2023: 6–7.
[76]   EUAA [s. a.].
[77]   Ekstedt 2023: 7.
[78]   European Commission 2024b.

origin. The harmonisation of return policies also adds to the migration repression aspect of EU external action on migration, with further limiting the legalisation of irregular stay in the EU.

The final approved proposal of the New Pact was the Voluntary Solidarity Mechanism. Based on the Declaration of Solidarity, which was signed by 21 European countries on 22 June 2022, the mechanism, after the failure of the 2015 mandatory mechanism became voluntary. The new mechanism, which was included in the Asylum and Migration Management Regulation as its Part IV, gave the opportunity to either offer relocation from the Mediterranean countries under migratory pressure or provide financial contributions to them.[79] Although the new mechanism offers a greater freedom in the nature of the offered solidarity action, it is still not appealing enough for all EU Member States for participation. Austria, Denmark, Estonia, Hungary, Latvia, Poland, Slovakia, Slovenia and Sweden were not among the signatories of the declaration. However, the voluntary nature of the mechanism allows Member State absence from the mechanism, its *á la cart* support options should have encouraged broader participation. The voluntary nature of it also allows the free-rider Member States to continue with their practices: they are not lying on EU external borders and tend to not participate in solidarity action and do not have elevated numbers of asylum seekers in their national systems.[80] Thus, the Voluntary Solidarity Mechanism can only be considered half of a success: it offers different options of support, but still not able to motivate all Member States to engage in meaningful solidarity action.

Nine proposals of the New Pact remained provisional, these were the Qualification Regulation, the Reception Conditions Directive, the Union Resettlement Framework Regulation, the Eurodac Regulation, the Screening Regulation, the Asylum Procedure Regulation, the Single Permit Directive, the Asylum and Migration Management Regulation and the Crisis Regulation.[81] For the purposes of the research, only those proposals are examined which contribute to the EU's response directly to refugee migration, asylum management and crisis situations. These were either the most debated elements of the European migration policy discourse or offer solution for future crises.

The Qualification Directive provides Member States with criteria which defines third-country nationals' eligibility for international protection. The reform of the directive was set to further harmonise common criteria, result in greater convergence of asylum decisions, ensure that international protection is granted during the eligibility of the individual, address secondary movements within the EU and harmonise rights and benefits for those who receive international protection.[82] The document accepted in 2024 builds specifically on the Geneva Convention criteria for international protection, just as the previous directive. In the meantime, it requires from the applicants a genuine effort to prove their case. This latter is the most significant change in the Directive. The Geneva Convention, and with that the minimum standards, remained to be the criteria for eligibility. Other, recommended criteria includes the valid visas, resident permits

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[79]   French Presidency of the Council of the EU 2022; European Council 2024c.
[80]   Costello–Mouzourakis 2017: 264.
[81]   European Commission 2024a.
[82]   Radjenovic 2024: 4–5.

previously awarded for the individuals. This however is deceiving, since firstly it is a recommendation, secondly, those in need might not be able to afford a visa to the EU.[83] In all, the new Qualifications Directive did not introduce major changes, and it added subjective elements (the assessment of genuine effort) to the equation, partly delegating also the responsibility of an asylum case to the applicants themselves.

While the articulated objective of the Commission was the reform of the Dublin system, its most controversial elements remained relatively unchanged. The Dublin Regulation was renamed to Asylum and Migration Management Regulation during the reform. With the new name, the Dublin Regulation got a new set of chapters too. After an elaborated definitions section, the regulation discusses the elements of EU comprehensive approach, then establishes the annual migration management cycle. The main element of the regulation, determining the Member State responsible for examining the asylum application is detailed in Part III. The criteria defining the Member State responsible for the examination of the asylum applications remained the same, the country of first entry. Previous and valid visas, diplomas and qualifications as well as residence permits can also be taken in account when determining the responsible Member State.[84] These criteria can be perceived as rather controversial, because of visa fees, studying abroad, and generally travelling legally to Europe can be unaffordable for those the most in need.[85]

The regulation on crisis and *force majeure* carries the promise of not repeating the events during the 2015–16 migration and refugee crisis. The Member State in crisis is eligible to invoke EU solidarity action, which is approved by the European Commission for the duration of three months, which can be repeated one time. The solidarity measures include relocation, financial contribution, or any alternative solidarity measures.[86] The crisis regulation provides a framework for the EU to handle mass migration situations. The regulation is yet to be tried out in practice for the final assessment of its effectiveness, however it can be stated, that the text is signalling an increased level of solidarity the EU pursues. The voluntary nature of the solidarity action can however hinder EU efforts, since it cannot be enforced, leaving Member State response to the goodwill of the respective countries.

The earlier raised concerns about the clearly defined criteria for asylum are still not addressed in the documents. The objective to further strengthen the EU's external borders together with the majorly unchanged Dublin Regulation is a betraying sign that the EU still wants to control migration through migration repression, and despite the EU payed lip service to establish solidarity mechanisms, the burden sharing of the Member States is still unequal, still allowing free-riders in the CEAS. The CEAS still answers to the internal security of the EU. The New Pact did not bring meaningful changes to the European migration policy as regards the establishment of legal pathways towards the EU. During this reform period, from 2020 to 2024, European migration policy remained in the realm of repression and prevention, seeking more and more for the externalisation of migration control.

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[83]   Costello–Mouzourakis 2017: 208–281.
[84]   European Council 2024d.
[85]   Costello–Mouzourakis 2017: 208–281.
[86]   European Council 2024e.

Conclusions

Europe became a migration destination region in the 1950s, willingly, and then a change in the migration flows introduced refugee migration into the equation. Europe became more and more a region of destination, but was reluctant to accept mixed flows of migration. The European Communities accepted their need for labour immigration, while the increasing refugee migration caused political tensions within. Thus, Europe opted for the overall importance of internal security and stability, while migration control was considered as migration prevention or restriction. Migration prevention through the externalisation of migration control, restriction through the protection of external borders. The first element of a common European system, the Dublin Convention of 1990 added more flaws to the system. The document created an environment of unequal burden sharing among Member States, leaving responsibility (to examine asylum applications) with the country of first entry. In the meantime, solidarity was only talked of.

The idea of creating a common system, the CEAS came forward in 1999. The creation of the common system started duly, but the too ambitious timeframe could not be followed, and the CEAS was only adopted in 2012. At this time, a drastic increase in the number of migrant's inflow to the EU was already predictable, yet the CEAS or Dublin III were not prepared for emergency.

2015–2016 marked the years with the highest figures of migration, and the EU could not react to the events with sustainable answers. *Ad hoc* actions both in the realm of solidarity, like the temporary relocation mechanism and migration prevention, like the Valletta Action Plan appeared. Rifts between Member States also prevented the EU from going forward, and deepen its integration in the field of migration permanently. Protectionism prevailed over protection (of vulnerable individuals) again. The existing CEAS and mainly the Dublin Regulation was not fit for situations of mass migration, like the so-called migration and refugee crisis. Besides the unevenly distributed burdens, criteria for asylum were never created. The collapse of the CEAS resulted in Member State solutions in response to mass migration.

To address the emerged issues, the reform process of the CEAS started in 2016, but it slowly lost from its impetus together with the declining figures of migration towards the EU. The Juncker Commission could not complete the reform of the CEAS and the Dublin Regulation. Thus, the process was inherited by the von der Leyen Commission, which relaunched it with keeping the elements of the reform started in 2016. The Commission introduced the plan to formulate a New Pact on Migration and Asylum in 2020 in parallel with the reform of the CEAS. Since the von der Leyen Commission took over the main elements of the 2016 reform, the above mentioned approach towards migration control through repression and prevention remained prevalent. However new mechanisms were established, solidarity became only voluntary, and the expected reform of the Dublin Regulation remained minimal. The Asylum and Migration Management Regulation (Dublin IV) did not introduce meaningful changes to the criteria for determining the Member State responsible. In the meantime, criteria for the eligibility for asylum are still not established clearly, narrowing the options for individuals in need to enter the EU's territory legally. Irregular entry to the EU is very risky hence the so-called migration and

refugee crisis, since Member States can penalise such entry based on national law. These developments altogether strengthen the *Fortress Europe* image.

The Asylum and Migration Management Regulation still needs meaningful reform which is not possible without Member State willingness on better burden sharing. In the meantime, the clear articulation of criteria of eligibility for asylum is necessary to open legal channels of entry for those in the most vulnerable situations. A better regulated legal pathway would result in a decrease of irregular migration as well as a reduction of related cross border crime, and would make decision-making easier too.

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