

Migration governance in the European Union: the new Pact on Migration and Asylum

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"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: nozinova@diakoniespolu.cz), as well as Focsiv in Italy (email: f.novella@focsiv.it)."

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1. INTERNATIONAL AND EUROPEAN MIGRATION GOVERNANCE INSTRUMENTS

With the adoption of the **2030 Agenda**, migration was recognized as a key factor in development and started to assume a central role for the international community. Under goal 10 “**Reduce inequality in and among countries**”, the Agenda directly refers to migration when calling to “**facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies**” (**objective 10.7**). Recognition made, target 10.7 does not specify a governance system for better managing migration.

The need to develop a roadmap for a comprehensive approach to human mobility and enhanced cooperation at the international level was recognized in 2016 with the adoption of the New York Declaration for Refugees and Migrants by the UN General Assembly. After two years of consultations and negotiations, the **Global Compact for Safe, Orderly and Regular Migration**² was adopted. **GCM** ‘presents a significant opportunity to improve the governance of migration, address the challenges associated with today’s migration, and strengthen the contribution of migrants and migration to sustainable development’³.

In **2015** the European Commission adopted the **European Agenda on Migration**⁴ ‘intended to address immediate challenges and equip the EU with the tools to better manage migration in the medium and long term in the areas of irregular migration, borders, asylum and legal migration’⁵.

The four pillars of the Agenda were related to the reduction to the incentives to irregular migration (addressing root causes, reinforcing EU’s return system, fighting smuggling and trafficking, cooperating with third countries), the improvement of the borders’ management (saving lives and securing external borders), the development of a new policy for legal migration, and the enhancement of the EU’s role to protect people through a strong common asylum policy (coherent implementation of the **Common European Asylum System** and of the **Dublin System** – see the Box - which establishes the Member State responsible for the examination of the asylum application).

²The Global Compact for Safe, Orderly and Regular Migration, adopted by the majority of UN Member States (with 152 votes in favor, 12 abstentions - including Italy - and five votes against - Czech Republic, Hungary, Israel, Poland and USA) in December 2018 in Marrakesh, is the first inter-governmentally negotiated (non-binding) agreement covering all dimensions of international migration. See <https://www.iom.int/global-compact-migration>

³See <https://www.iom.int/global-compact-migration>

⁴For the document see https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

⁵Cfr. <https://archivio.pubblica.istruzione.it/argomenti/ifts/amburg97.shtml>



Ph. Global Goals for Sustainable Development

and family unity-, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered the common territory of the Dublin Member States irregularly coming from a third country”⁸.

In this last case, the Member State thus entered shall be responsible for examining the application for international protection⁹.

The Dublin system was not designed to ensure a sustainable sharing of responsibilities for asylum applicants across the EU¹⁰: the responsibility for the vast majority of asylum claims is usually placed on a small number of EU external border countries.

Box I. Dublin Regulation

Dublin Regulation (lastly reformed in 2013 with Dublin III) establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person⁶. The Member State responsible...shall be determined on the basis of the situation obtaining **when the applicant first lodged** his or her application for international protection with a Member State⁷.

In order to identify the State responsible for examining the asylum claim, the Dublin Regulation uses a number of specific criteria that “run, in hierarchical order, from family considerations -protection of unaccompanied minors

Various debates have taken place over these years on the revision of the Dublin system. In September, 23rd2020 the European Commission presented a proposal for a common governance on asylum and migration management: the New Pact on Migration and Asylum.



⁶ Art. 1 of Regulation EU n.604/2013. For the document see <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>

⁷ Regulation EU n.604/2013, Chapter III, art 7, 2. Ibid

⁸ See <https://www.easo.europa.eu/easo-annual-report-2018/26-dublin-system>

⁹ Chapter III Art. 13 EU Regulation 604/2013.

¹⁰ See https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet_-_the_dublin_system_en.pdf

2. AN OVERVIEW OF THE NEW PACT ON MIGRATION AND ASYLUM

The 2015-6 humanitarian crisis brought up a series of differences among member states that should be overcome within the EU. These differences were mostly due to the management and reception of migrants among those States which had to deal with disembarkations (Italy, Spain, Greece and, through the Balkan route, countries like Croatia and Hungary), and those that were geographically far from disembarkation points and, in turn, seemed to be not involved with migratory flows.

In this context, the New Pact may represent a turning point in order to start a new phase of cooperation and solidarity in Europe. The Pact is a communication of the European Commission (EC) with 9 legislative proposals aiming to better manage migration and asylum seekers, as well as provide responses to a possible future 'crisis' at the European borders.

Its main objectives and actions are: **a)** a robust and fair management of external frontiers, which include an identity, sanitarian and security scrutiny; **b)** equal norms and laws in terms of asylum procedures and a facilitation process in terms of asylum and repatriation; **c)** a new mechanism of solidarity for search and rescue actions, crisis and pressure situations; **d)** better preparation and prevision of a future possible crisis; **e)** an effective repatriation policy and a coordinated approach at EU level; **f)** a complete

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

According to the communication's proposals¹¹, the first move is that EU member States, particularly those more exposed to migration flows along the external borders, should develop an identity, sanitarian and security scrutiny to be recorded in the Eurodac system. This should put the asylum request on a fast track in order to process them more quickly.



Ph. corriere.it

¹¹ To go in depth see <https://eur-lex.europa.eu/legal-content/IT/TXT/DOC/?uri=CELEX:52020DC0609&from=EN>

In addition, the New Pact proposes also an accelerated border procedure according to asylum acceptance rates (at least 20%)¹² in Europe. This means that, if migrants of a given nationality show a lower rate of accepted requests, they should have a quicker process of the asylum request (the process should not take more than 12 weeks), because an assumption exists on their non-fulfillment of asylum conditions.

Migrants, before entering officially the first-country, will remain at the border, in the hotspots, waiting the result of their asylum request. In case an asylum request is rejected, the authorities will proceed to the migrant's **repatriation**. This would reduce the risk of having unauthorized movements within the Schengen area.

A **new solidarity mechanism** should curb the difficulties of the more exposed countries (i.e. Italy, Malta, Greece, Spain) and guarantee that all the member states play their role. This new mechanism will be focused on the processes of relocation and/or repatriation. A member state, that is not available to receive relocations, may sponsor repatriations, and, in turn, the country receiving the sponsorship should carry out and control that the repatriation takes place within an established period.

EU institutions will play a major role in supporting member countries in managing border and asylum procedures. The European border and coastal guard will be empowered to guarantee a more effective control along the borders. The European Agency FRONTEX will reinforce

its support to the member states on border management and repatriations, and an executive Vice-Director for the repatriations will be appointed. EASO will sustain national authorities for the implementation of the asylum procedures. A stronger IT support will allow to control identities upon arrival, particularly, the Schengen Information System will assure the inter-operability of all the control systems. The Eurodac system will be improved¹³.

The European Parliament and the European Council should, in turn, adopt a common regulation for asylum and migration, and a common management for the entry screening and asylum procedures within June 2021. Furthermore, these two institutions should give priority to the adoption of an European support to the reform of Eurodac, reception condition directives and guarantee a swift conclusion of the negotiations on the revised Return Directive.



Ph. hrw.org

¹² This percentage is justified by the significant increase in the number of applications made by applicants coming from countries with a low recognition rate, lower than 20%, and hence the need to put in place efficient procedures to deal with those applications, which are likely to be unfounded. Source: https://ec.europa.eu/info/sites/info/files/1_en_act_part1_v3_1_0.pdf

¹³ The EURODAC establishes an EU asylum fingerprint database. When someone applies for asylum, no matter where they are in the EU, their fingerprints are transmitted to the EURODAC central system. See: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en

Another objective of the New Pact is the establishment of a monitoring process to reinforce resilience and provide for a **common response to a possible crisis** -such as that of 2015/2016-.

A member State, should it be affected by a relevant wave of migration flows, will ask other EU countries for operational support. This will require a legislative instrument with a double objective: to give more flexibility to member states that are facing the crisis to react as quickly as possible; to guarantee a solidarity system among member states with mandatory relocations. This will be useful when the deadlines set out in the law on asylum procedures are hard to meet.

The New Pact recognizes the duty to give assistance with search and rescue operations according to the international right. FRONTEX should give and guarantee more operational support in terms of rescue means to member states and a gradual improvement of the operations. In addition, private search and rescue operations are allowed with a tight cooperation among Member States. Finally, the EU will take on a more effective cooperation with countries of origin and transit in order to prevent dangerous journeys and irregular crossings, including through tailor-made Counter Migrant Smuggling Partnerships with third countries.

A further objective is related to the **struggle against smugglers** and it is focused on the European strategy against criminal networks which aims to cooperate with and support authorities such as Europol, Frontex and Eurojust. This would be implemented by the cooperation with third countries especially throughout par-

tnership aiming at the exchange of information and creating common investigation teams and campaigns in order to sensitize people on the risks of irregular migration. Europol will collaborate strictly with the Western Balkans, and the EU Commission will be committed to taking on agreements similar to the one signed with Turkey¹⁴. Security operations, as EUCAP in Sahel Niger and EUBAM in Libya, will also be implemented and reinforced with the already established IRINI¹⁵.

An important point of the Communication is related to **international cooperation with third countries**. The EU neighboring countries, i.e. North African countries, Balkans and Turkey, are central actors for stipulating new agreements that would provide them with new tools as well as new skills in order to face migration challenges. Migration represents a large part of a common and global strategy with Africa, which aims to reinforce commercial, political and economic relationships. The EU funds for migration management are increasing and this is strategic to reach EU objectives. At least 10% of the new Neighborhood and Development Cooperation Instrument will be spent on migration issues.

Europe has a solid experience in humanitarian cooperation and in saving human lives and this should be reinforced at the global level. Prevention and conflict resolution are at the top of EU agenda, and commercial and investment policies are crucial to spur the development these countries need. In addition, Europe wants to sustain third countries in managing migration and people displacement, struggling against smugglers' networks.

¹⁴ See <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

¹⁵ To go in depth with the issue: <https://www.operationirini.eu/>

This should be realized throughout a strategic communication and supportive initiatives aiming at informing people about regular migration channels, explaining the risks of irregular crossings and contrasting misinformation. A crucial point is the development of the capacity to have a good return system and a reintegration path in the country of origin, by giving the returnee the possibility to have a good and respectful re-integration within his/her country.

Finally, it is also envisaged to improve the Blue Card and promote a **regular channel to attract talented migrants** to Europe. The ageing of the European population and the population decline will affect the labour market in Europe and will put structural pressure on it.

The Agenda of the Skills in Europe recognizes the central role of migrants in reducing the deficiency of labour skills, and in rising the dynamism of the labour market in Europe. According to figures¹⁶, in 2018 the EU issued more than 750,000 working permits to third countries' citizens in order to fill labour market voids. In addition, implementing students' exchanges and promoting researchers' travels is a core point to regularly enter Europe.

The New Pact was severely criticised by the civil society, especially for the 'repressive measures' and methods of screening at Member states' external borders. In the next paragraph, criticisms are collected to have a better overview on the political debate.



Ph. stranieriinitalia.it



Ph. ansa.it

¹⁶ See <https://ec.europa.eu/eurostat/web/main/data/statistics-a-z/abc>

3. VOICES FROM THE CIVIL SOCIETY

The New Pact on Migration and Asylum has been presented but many challenges remain. Civil society organizations raised their concerns regarding especially the insufficient protection guaranteed to asylum seekers and migrants, and the externalization of controls. Here we provide a synthesis and comparison between the positions of GREI 250¹⁷, ECRE¹⁸, Euromed Rights¹⁹ and Concord Europe²⁰, on the main challenges and proposals to overcome them relating to the New Pact on Migration and Asylum²¹.

Criticism is mostly related to the fact that the Dublin system is basically repropounded, the protection of migrants' human rights is not adequately guaranteed, and the externalization of borders and the returns continue to be the main priorities. Further in depth, GREI 250 and Euromed Rights list among the challenges related to the New Pact the fact that the **EU maintains, indeed reinforces, the principle of responsibility of the first country of entry**. It puts the management of international protection under the responsibility of EU's external border countries, to the detriment of asylum seekers who often have no social ties in the first country of entry.

Disapproval for the screening procedure that should take place at borders and put migrants in a kind of legal limbo is also a common matter of concern.

The determination of the right to international or subsidiary protection takes place in many cases in closed facilities near the border (the so called "hotspots") within 12 weeks, including the time for a decision on appeal. Migrants won't be officially admitted on EU territory, despite being de facto on the European land.

This violates their right to liberty, right to asylum, right to appeal and to receive legal assistance. In addition, the simple fact of belonging to a nationality for which less than 20 % of asylum applications on average are accepted in the first instance, automatically applies a special procedure with reduced guarantees.



Ph. viedifuga.org

¹⁷ GREI 250 is an Italian network gathering experts and civil society organizations promoting social inclusion of migrants. See <http://www.programmaintegra.it/wp/2020/10/patto-europeo-sulle-migrazioni-un-appello-alla-societa-civile-europea-di-grei-250/>

¹⁸ ECRE is an alliance of 106 organizations in 40 countries with its Secretariat in Brussels. The alliance works to promote the rights of refugees, asylum-seekers and other forcibly displaced persons in Europe and in European external policies. See <https://www.ecre.org/members/>

¹⁹ Euromed Rights is a non-governmental organization aiming to promote cooperation and dialogue in and between countries on both sides of the Mediterranean Sea. EuroMed Rights is a network representing 80 human rights organisations, institutions and defenders in 30 countries. See <https://euomedrights.org/about-us/who-we-are/>

²⁰ European Confederation of Relief and Development NGOs. See <https://concordeurope.org/about-us/21-Arturo-Raffaele>

²¹ This paragraph has been developed with the aim of providing a brief overview of the information contained in the following web pages and documents, to which we refer for the positions in detail: <https://euomedrights.org/publication/eu-pact-on-migration-fresh-start-for-human-rights-violations/>; <https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/>; https://euomedrights.org/wp-content/uploads/2020/10/Analysis-of-Asylum-and-Migration-Pact_Final_Clickable.pdf; http://grei250.it/assets/documenti/GREI250_New_Migration_Pact.pdf; <https://www.percambiarelordinedellecose.eu/grei-250-modificare-il-patto-europeo-su-migrazioni-e-asilo/>; <https://concordeurope.org/resource/reaction-to-new-pact-on-migration-and-asylum/>.

Box II. New Pact on Migration and Asylum, simulation of its impact on Italy

The impact of the provision contained within the New Pact on Migration and Asylum would raise considerable challenges in Italy, especially regarding “detention” at the external borders. According to Euromed projections²², considering the current situation of overcrowding and degrading conditions of migration facilities in Italy (hotspots and Permanent Repatriation Centres, PRCs), it is not realistic to keep all the asylum seekers arriving in Italy in detention within the timeframe set by the EC proposal.

Considering that as of last October, the number of asylum seekers who had arrived by sea in 2020 was 25,920 and imagining that the plausible number of migrants who would have undergone a border procedure would be estimated between 16,486 and 21,440, the number of people who should be detained is much higher than the available places.

In fact, the capacity of the current immigration detention facilities in Italy is 1,072 places for the hotspots and 1,235 places (across the territory) for the PRC. In addition, with a current average duration of 2 years for the asylum procedures, it is unlikely that the asylum border procedures will be completed within the time set of 12 weeks.

Another challenging aspect is that of solidarity. This “mechanism” allows other Member States to choose different alternatives over relocation and many countries such as (but not only) the Visegrad four, have already declared they will not accept relocations, thus stressing the pressure over the country of “first entry” like Italy.



Ph. zeroviolenza.it



Ph. portaleimmigrazione.eu

²² Data and information summarized and taken from: Euromed Rights New Pact, Wrong Impact, How the EU Migration Pact disadvantages both Italy and asylum seekers, November 2020. For the document and the analysis in detail see <https://euromed-rights.org/wp-content/uploads/2020/11/LAYOUT-MIGRATION-EN-fin-1.pdf>

In relation with the external dimension of the Pact, GREI 250 lists among the challenges related to the New Pact, the fact that the EU will promote readmission agreements **with countries of origin and transit of migrants, without taking into account the respect of human rights in those countries**, and without proposing any trace of “humanitarian channels” to Europe for those fleeing wars or crisis situations. This translates into more pushbacks across the Mediterranean region, putting migrants into a situation of vulnerability.

Euromed rights, ECRE and GREI²³ criticise the focus put **on returns through the sponsorship system**. The proposal to provide “return sponsorship”, instead of supporting individual Member States relocating people into their own territories, enables EU countries who refuse to welcome refugees to “sponsor” their repatriation to the countries of origin, even when they risk discrimination, persecution and torture. In addition, ECRE points out that **in crisis situations Member States can derogate from important safeguards which will subject more people to substandard asylum procedures. In case of migratory pressure, Member States can suspend, among other things, registration of asylum applications for four weeks and up to a maximum of three months. With no claim registered for weeks, people may be at risk of detention and their rights to adequate reception and basic services can be severely affected**²⁴. That enables Member States to derogate from their responsibility to provide access to asylum seekers and ensure that asylum requests are treated efficiently, therefore increasing the risk of refoulement.

In turn, Concorde Europe underlines the external dimension of the New Pact and how forced migrations are often generated by European policies through the exploitation of natural resources, exacerbating conflicts, trading arms and supporting authoritarian governments. Concord criticises the instrumental use of aids to stem migration and deviate development cooperation projects from poverty reduction to migration management. In this sense it sustains that 10% of the Neighborhood and Development Cooperation Instrument should be spent to attack the root causes of migrations rather than migration management.

The New Pact, according to Concorde Europe, lacks a comprehensive political approach linking migration to Sustainable Development Goals. In this direction, Concord Europe stressed the importance of overcoming the different policy tools among Member States, and called for a unitary tool in order to recognize the relationship between migration and the well-being of people in both European countries and developing countries²⁵.

Albeit expressing concerns and criticism about the New Pact on Migration and Asylum, this sample of civil society networks has also elaborated some **recommendations** to improve the provisions contained in the Communication. Euromed rights proposes, as an example, to adopt a humane and rights-based approach to migration and asylum by ensuring real accountability for human rights violations, including the violation of the principle of non-refoulement.

²³ See http://grei250.it/assets/documenti/GREI250_New_Migration_Pact.pdf

²⁴ See <https://www.ecre.org/the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/>

²⁵ See <https://concordeurope.org/resource/reaction-to-new-pact-on-migration-and-asylum/>

Along the same line, GREI 250 adds that the system of human rights monitoring envisioned in the New Pact needs to be guided by qualified representatives of human rights organizations, who can offer relevant experiences, researchers, data analysts, interpreters and mediators compared to national public institutions.

In addition, Euromed rights asks to put a real mechanism for protection, inclusion and safe access to the European territory at the heart of the Pact (i.e. increasing safe and legal pathways to the EU, implementing safe and fair labour migration policies, liberalizing visa policies -including for work, studies, family reunification- towards an open movement area across the Mediterranean).

Also the gender perspective and the best interests of children should be taken into account in all migration and asylum policies.

As of the statement of GREI 250 on the New Pact on Migration and Asylum in fact, the “quick decisions on asylum or return” affect mostly unaccompanied children and vulnerable groups who usually need more time to tell and reconstruct their stories.

ECRE proposes for the negotiations around the New Pact, among other things: to reject the mandatory implementation of asylum or return border procedures; to work towards the end of migration-related detention which is a practice opposed also by both GREI 250 and Euromed Rights; to expand safe and regular arrivals to Europe by increasing opportunities for protection pathways as well as for regular migration to work and study in Europe, to recalibrate reform proposals that should focus on maintaining and

raising asylum and human rights standards in Europe, rather than pushing on return.

As for Concorde Europe, as mentioned, the external dimension of the New Pact is central and is directly related to the SDGs goals. Concord calls for legal pathways for migration and this means strengthening humanitarian corridors and measures such as study or work-related schemes.



Ph. [corriere.it](https://www.corriere.it)

Concord Europe also proposes that Member States should have a people-centered approach in their migration policies, and this means that every State should recognize that migration is one of the key elements of SDGs. On the other hand, Concord agrees on the EU efforts to reform migration policies and strongly supports its commitment to provide life saving actions for millions of migrants and refugees, and it completely agrees that the management of migration is a shared-European responsibility.

The negotiation process on the New Pact on migration and Asylum will take a long time: the proposal from the Commission should be debated and emended by the European Parliament and the European Council. In case of revisions by these two bodies diverge, there will be trilogues among the Commission, the Parliament and the Council to find a common outcome.

The German presidency of the European Union would have ended this process as soon as possible. However, critics and different positions within the Union and its Member States, especially those from Southern Europe and Visegrad, suggest that the process will last throughout 2021.

In this framework, civil society organizations will build up a dialogue with the European parliament and the Council to support a human rights-centered and solidarity policy towards migrant lives.



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Ph. vaticannews.va



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2. THE NEW PACT ON MIGRATION AND ASYLUM: AN OVERVIEW

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