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The New European Pact on Immigration and Asylum can it respond to future migration challenges?

In September 2020, the European Commission, through its Chair Ursula von der Leyen, launched the third [European Pact on Immigration and Asylum](#). The first one dates from 2008 and the second from 2014, i.e. one every six years. This pact, like the previous ones, is not a treaty but a consensus commitment on common principles for the governance of migration and asylum in Europe. In the context in which it is set, it requires more compromise than the previous ones: the Syrian crisis of 2015 revealed the lack of solidarity between Member States regarding the reception of Syrian refugees, the lack of trust between States regarding the [proposals made by the European Commission to "share the burden"](#), with Jean-Claude Juncker's quotas and the divide between Eastern and Western Europe between the so-called Visegrad countries (Poland, Hungary, Czech Republic, Slovakia) and Western Europe, notably Germany, which received more than one million asylum seekers in 2015. It will therefore take more time for the new Pact to be adopted unanimously by the European [Council](#) and undoubtedly, more negotiations and even bargaining. In the current context, following the US withdrawal from Afghanistan and the Taliban takeover, which raises concerns about the arrival of new Afghan refugees, does the new Pact offer the necessary instruments to formulate a common and effective response to future migration challenges?

WHAT ARE THE MAIN FEATURES OF THE EUROPEAN PACT 2020?

The Pact sets the goal of "a fair and reasonable immigration policy", perhaps drawing on the subtitle of the 2018 Marrakesh Global Compact, "*For Safe, Orderly and Regular Immigration*". It sets out a number of key points:

- Harmonising asylum law by reviewing, in particular, the Dublin Regulation and asylum applications from countries where asylum seekers have obtained less than 20% positive responses;

- organising compulsory solidarity decided by the European Commission in the event of a crisis;
- speeding up border deportations and make them more effective, in particular by activating readmission agreements with third countries in exchange for closer cooperation on development;
- strengthening external border controls through increased resources for Frontex. A screening process is scheduled as a precondition for entry into the European Union.
- not prosecuting humanitarian organisations, allowing them to enter ports, and welcoming migrants rescued at sea.

Although European States agree on tighter control of [borders](#) and deportation to the countries of departure or transit, it is not the case for solidarity. The European Pact aims to put an end to the Dublin system, but it will continue to exist, probably under a new name that has not yet been defined. We should remember that [the Dublin I agreements](#) (1990) sought to counter "*asylum shopping*" consisting of asylum seekers applying to several European countries and choosing the one with the best terms. From now on, one can only apply for asylum in one country upon arrival.

Under the Dublin II agreements (2003), asylum seekers who set foot in a European country were obliged to apply in that country. This created a divide between the southern European border countries and the rest of Europe. As people rarely arrive in Europe via Sweden or Finland, this meant that Southern Europe became the entry point for asylum seekers who, if they had been identified according to their fingerprints in these countries (Greece, Italy, Spain, Malta), had to have their application examined in these countries where positive responses were rare (Greece in particular), procedures were long and the employment prospects for settling once refugee status had been acquired were unattractive or non-existent.

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This tendency of countries in the North, West and East of the Union to offload asylum onto the countries of Southern Europe has had political consequences leading, for example, to the rise of the extreme right in Italy (with the League) and in Greece (with Golden Dawn). But this system also aimed to promote the previous "burden sharing" of reception between European countries (Germany and Austria, which had received many refugees and migrants after the fall of the Berlin Wall), while strengthening the means of border control and pressure on the EU's neighbouring countries.

In addition to military and computerised border control instruments, the main instruments used have been ([FRONTEX](#), SIVE – Integrated External Vigilance System –, [EURODAC](#) – fingerprinting of incoming asylum seekers, but also of identified undocumented migrants and delinquents), deportation agreements with countries on the southern shore of the Mediterranean and beyond, outsourcing of European border control to non-European countries, return and development policies.

The adoption of the new Pact, which requires unanimity in the Council, therefore seems to have little chance of success, given the position of the Visegrad countries, as seen in 2015. In addition to their very strong opposition to solidarity and the reluctance of countries such as Austria, Denmark, for example, has adopted very radical positions against asylum, rejecting the EU's common immigration and asylum policy and seeking to process asylum applications remotely in the countries of departure or transit, as announced by Denmark in summer 2020. The presidential campaign in France and the negotiations for the formation of a coalition in Germany, following the elections of 26 September, may also influence the timing and success of the new Pact.

The associative world has spoken out against the Commission's proposals on entry screening; restrictions on the examination of asylum applications from countries with a very low agreement rate; the continuation of the Dublin agreements and the lack of reflection on legalising entry for work reasons, which would reduce the demand for asylum from countries that are not at war; the strengthening of border control instruments such as Frontex; and the "peripheralisation" of asylum management, in concentric circles: first Southern Europe, then the Southern Mediterranean, then Sub-Saharan Africa and the Near and

Middle East. In fact, the Pact focuses more on asylum than on immigration and does not deal much with labour shortages (highlighted by Covid-19 and Brexit) and integration (which is not a European competence, but a national or local one by virtue of the subsidiarity rule).

The [European Pact on Immigration and Asylum](#) aims to build trust and create a new balance between responsibility and solidarity. It recommends screening at entry with EURODAC registration (some southern European countries have not always registered fingerprints of newcomers, letting them go abroad). It provides for a flexible contribution by Member States, so as not to coerce, through relocations to other host countries and the sharing of return costs between European States. It also provides for the cooperation of third countries, an accelerated asylum procedure for applicants of nationalities with a recognition rate of less than 20% (which presupposes a high degree of homogeneity of profiles, which is not always the case within the same nationality).

The Pact also seeks to develop a global approach through a common return system, a strengthening of control instruments (border and coast guards) with a European coordinator in charge of returns. It encourages legal migration to attract talent and proposes a comprehensive action plan on integration and exclusion. The role of [EASO](#), renamed the European Union Agency for Asylum, is to be strengthened to better harmonise the rates of acceptance and refusal of asylum applications between European countries, which currently vary due to the sensitivities and diplomacy of each State, which are anxious to preserve their sovereignty in this area.

Finally, the Pact states that humanitarian sea rescue NGOs should not be turned away and should not be criminalised, and that they should have access to European ports.

The Pact is not a treaty: it has no binding effect on those who sign it. Most observers point to the lack of radical change announced, the continuation of the Dublin system and the "hot spots" whose end was planned, the dependence on failed solutions (return and development policies) to contain migration, the abandonment of a binding distribution of new arrivals and the insistence on the strategy of dissuasion with many resources devoted to control, of little effect, with no prospect of putting an end to illegal immigration, whereas

only the opening of legal channels for labour migration seems to be an antidote to the tragedy of crossings, deaths at the borders and the fortunes of smugglers.

The Pact focuses on asylum more than on immigration, given the international context in which Europe finds itself. According to the experts, the points that are likely to succeed are the regulation concerning asylum (strengthening of the EASO Agency), the European Blue Card on skills and talents, already adopted by the European Parliament on 15 September 2021, to facilitate the employment of qualified non-European nationals within the European Union. On the other hand, the end of the Dublin system seems to have been put off until later. Finally, integration, which is mentioned, will continue to be dealt with in the framework of subsidiarity, i.e. left to the competence of each Member State. The adoption of a common policy on flows requires a change in mentality within the Union and an approach linking immigration and asylum.

COULD THE PACT HANDLE A POTENTIAL AFGHAN CRISIS?

The President of the European Commission, Ursula von der Leyen, recalled that Europe has, with the Pact, an instrument to deal with the arrival of Afghans at European level. Following the Taliban takeover of Kabul on 15 August 2021, some 100 000 people had left Afghanistan, repatriated by US forces to their bases in Germany, Spain, Italy and Kosovo, or by European flights which had repatriated some of those employed by those countries.

Europe sent troops to Afghanistan, used interpreters and other local staff, and allowed many NGOs to help the population on the ground, while the United Nations High Commissioner for Refugees (UNHCR) tried to fulfil its mission of protecting the right to asylum by being present in Afghanistan, Iran and Pakistan. Afghanistan has produced the largest number of refugees since the beginning of the Soviet invasion in 1979. Most of them have taken refuge, 90% of them, in neighbouring countries, notably Iran and Pakistan, whose language they sometimes share (which explains the attraction of young Afghans for the United Kingdom where there is a large Pakistani population), but also in Tajikistan or Uzbekistan. As in many international conflicts, the poorest migrate within their own country (with

332,000 new IDPs since 2021, including 100,000 since August 2021). 22,000 people have sought protection in neighbouring countries since the beginning of 2021. Only a minority are heading to Western countries. In terms of stable populations (stocks), there are 3.5 million IDPs and 2.2 million Afghans in neighbouring countries. The UNHCR estimates that there are 500,000 potential internal refugees and 300,000 departures to Iran and Pakistan, and Europe expects an additional 500,000 Afghan asylum seekers in 2021.

According to the European Asylum Agency (EASO), 123,000 Afghan asylum seekers have arrived in Europe since August 2021. 50% of them obtain protection in Europe, either humanitarian or statutory as refugees under the Geneva Convention. Since 2018, France is the country in Europe that receives the largest number of Afghan asylum seekers (more than 10,000 per year), partly due to the transfer of asylum seekers from one European country to another, once the asylum channels in the first country of arrival (Germany most often) have been exhausted. Reception after the required time limit, or the obligation, instead of applying in the first identified European country where one has set foot (the Dublin "one stop one shop" system as in the case of the Afghans in Calais).

The profiles of the asylum seekers are diverse: intellectuals and scientists left as soon as the Soviet invasion of 1979. Then young Afghans arrived, sometimes isolated minors, having travelled the Balkan route, often on foot. Of the new arrivals, 45% are women, families, with a third of them children. Many of them already had links with Europe (spouses of nationals) and held "risky" jobs: lawyers, journalists, artists, members of associations, although the level of education was low for some of them, particularly in terms of language learning (not financed during the asylum application). Some of the civilian auxiliaries or locally recruited civilian personnel who helped European countries during their military presence in Afghanistan have also been repatriated. But the closure of European embassies blocks the departure of people in danger of death in their country.

On 16 August, French President Emmanuel Macron said that "France is doing and will continue to do its duty to protect those who are most at risk", while recalling "the need to protect against significant irregular migration flows". OFPRA

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decisions have been blocked since mid-August and there is no longer any question of sending rejected asylum seekers back to Afghanistan: no more so-called "Kabul" jurisprudence, where they were sent back to the Afghan capital, which was considered "safe" unlike the rest of the country.

In Germany, Angela Merkel acknowledged that she had underestimated the Afghan situation, reminding us that we should not repeat the mistakes of the Syrian crisis: avoid a new influx of refugees into Europe and help those in danger to find safe places in the vicinity of Afghanistan. This is a nuanced statement, to say the least, compared to the figure that the German chancellor had forged for herself by welcoming the Syrians in 2015: "wir schaffen daß (we can do it)". In Turkey, the country hosting the largest number of refugees in the world (around 5 million in total, of which 3.7 million are Syrians), although the reception of Syrian refugees has served Turkish diplomacy in its relations with Europe (March 2016 agreement), a wall has been built over 100 km on the Iranian border and the population is showing its discontent.

brandished by populist parties in Europe will not happen, but the European Pact on Immigration and Asylum will be of little help. The reinforced return policy is not feasible towards Afghanistan, as it seems difficult to envisage a filtering at the entry of those who would not fit the profile of refugees. It seems difficult to encourage, through aid and agreements, an infinite outsourcing of the settlement of refugees to Iran or Pakistan, as Europe did with Turkey in 2016, because Iran and Pakistan are not interlocutors of the same nature as Europe. Europe is not in a position to impose "burden sharing" among European States, as the most recalcitrant were not sanctioned in 2015. Once again, the contradictions between the security approach that dominates European governments, the lack of solidarity between States and the reminder by the head of European diplomacy, Josep Borrell, of the duty of European countries to welcome immigrants are now looming on the horizon. The European pact for immigration and asylum tabled in 2020 by the European Commission does not seem to be an effective tool and the absence of a common asylum policy, which would be so necessary, is cruelly lacking[1].

[1] On Taliban Afghanistan, see Adam Bacsko, *La guerre par le droit: les tribunaux talibans en Afghanistan*. CNRS Editions, 2021.

It is therefore likely that we will not see a new version of the Syrian crisis, as fewer Afghans are taking the western route than the Syrians did. The warning of a great migration wave

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