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# Case Study: “The evolution of migration and asylum policy in the EU: from the Common European Asylum System to the New Pact on Migration and Asylum”

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## Introduction

The unprecedented arrival of almost 2 million people on European territory between 2015 and 2016 exposed the vulnerabilities of the EU's Common European Asylum System (CEAS). Dating back to the 1990s, the CEAS aims to homogenise the policies and procedures for the reception of asylum seekers or subsidiary protection of Member States while ensuring respect for human rights, based on the full application of the Geneva Convention (European Commission, 2024).

In 2020, the European Commission announced a comprehensive reform affecting all CEAS instruments, aiming to implement a new system capable of providing effective management at EU level, while circumventing criticism from left-wing parties, NGOs and civil society for the recurrent humanitarian crises in the Mediterranean. However, the New Pact on Migration and Asylum continues to raise discrepancies between Member States, highlighting the latent divisions between blocs within the EU, as well as the inability to establish a credible mechanism of inter-European solidarity.

Currently, migration management is one of the great challenges that the European Union (EU) must face in order to protect the fundamental values on which it is built and to ensure its survival. This case study looks at the evolution of the policy cycle of the CEAS, its limitations and the divisions between Member States. It does so by focusing on three temporal divisions: the early life of the CEAS until the so-called 'migration crisis' of 2015, the time interval between 2015 and 2016, and the latest phase comprising the communication of the New Pact on Migration and Asylum until its full adoption in 2024.

### 1. Pre-migration crisis

European migration policy emerged with the Maastricht Treaty in 1993 under the competence of the Justice and Home Affairs Council, following the increase of migrants and asylum seekers during the 1980s from Asia and Africa (Van Munster, 2009; Kuusisto-Arponen and Gilmartin, 2015). Until then, individual Member States had adapted their own internal regulations in what was often labelled as a "race to the bottom" (Hatton, 2012). Each Member State had its own criteria and procedures to process migration and asylum applications, although they shared the common definition of 'refugee' as established by the 1951 Geneva Convention on the Protection of Refugees:

[S]omeone who 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 [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it. (Geneva Convention on the Protection of Refugees, 1951, Art 1)

One of the most fundamental steps towards the creation of a European common migration management system was the entry into force of the Schengen Agreement in 1995. The Schengen Agreement ended border controls between Member States, as well as single-entry visa and common requisites for its obtention (Gladyshev & Sychev, 2020). At first, priority was given to the harmonisation

of national asylum systems and the reinforcement of external borders, especially regarding Eastern European countries in the context of the EU enlargement process (Boswell, 2008). The Dublin Convention, signed in 1990 as an international treaty, came into force in 1997 and established a hierarchy of liability criteria for determining the responsibility of Member States in evaluating asylum applications. The first criterion was based on the principle of family reunification, followed by that of the Member State in which the applicant was located. This would ensure that the asylum applications were evaluated by at least one state, while at the same time preventing "asylum shopping" —asylum seekers applying to several states simultaneously (Hurwitz, 1999).

In 1999, the Treaty of Amsterdam came into force, transferring migration policy from the third pillar (Justice and Home Affairs) to the first pillar (European Communities), giving the European Commission the right to propose legislation from 2002 (Hatton, 2012). It is precisely at the special Tampere Justice and Home Affairs Council of the same year that the foundations of the CEAS were laid, based on the full application of the 1951 Convention Relating to the Status of Refugees (to which all Member States were signatories). During what is normally classified as the first stage of the CEAS (from 1999 until 2004), the Tampere program sought to harmonise asylum policy through various instruments:

- The Reception Conditions Directive, which laid down minimum standards for the reception of asylum seekers, including housing, health care and the right to work during the asylum procedure (European Council, 2003).
- The Eurodac fingerprint database of asylum applicants and other unlawful crossing of the external borders, aimed at building a computerised central database shared between the Member States (EU Monitor, 2000).
- The Qualification Directive, which set the conditions for the qualification of nationals of non-EU countries or stateless persons as refugees or as persons who need international protection. The Qualification Directive is aligned with the Geneva Convention and considers entitled to apply anyone who cannot return to their country of origin for fear of persecution based on race, religion, nationality, membership of a particular social group or political opinion grounds (EU Monitor, 2004).
- The Asylum Procedures Directive of 2005, which aimed at reducing the disparities between national examining procedures and formulating minimum standards for procedures of granting and withdrawing refugee status (EU Monitor, 2005).
- The revision of the 1990 Dublin Convention, which was replaced by the 343/2003 Council regulation, more commonly known as Dublin II, in all EU Member States except for Denmark. Dublin II not only extended the scope to the new Member States, but also to other associated countries such as Norway, Iceland and Switzerland. It brought higher precision on procedural rules, timelines and criteria to determine the responsible Member States. It also put in place the Eurodac system for sharing information on asylum applicants (Council of European Union, 2007).

Although these directives were transposed into national legislation, harmonisation was an incomplete process as they only provided minimum standards and did not encompass administrative procedures and reception conditions of asylum seekers (Hatton, 2012). In fact, one of

the issues that remained unresolved was the distribution of refugees: the Temporary Protection Directive included the possibility of relocating refugees from Member States under great migratory pressures, but without providing specific indications for relocation, which hinged on inter-European solidarity (Hatton, 2012).

Another particularity of the Tampere program was the mainstreaming of migration and asylum in the EU's external relations. This emphasis in mainstreaming of asylum and migration in EU foreign policy is reiterated in initiatives such as the Hague program of 2004, which marks the beginning of the second stage of the CEAS and lasted until around 2010. This was a period of deepened cooperation in several areas, such as the procedure for obtaining refugee status; the appeals procedure; access to social benefits and integration programs with increased funding from the European Refugee Fund and labour coverage and sanctions in case of illegal return (Hatton, 2012). One of the major milestones in this phase is the establishment of Frontex, the European Agency for the Management of Operational Cooperation at the External Borders. Frontex started working in the framework of the Global Approach to Migration in 2005, marked by the mediatic arrival of hundreds of migrants in Ceuta, Melilla and the Canary Islands in the summer of that year (Hatton, 2020; Boswell, 2008).

The entry into force of the Lisbon Treaty in 2009 modified both the voting system in the Council on migration-related issues—which became governed by a qualified majority voting system<sup>1</sup> instead of unanimity—and the roles of the European Parliament, granting it powers of co-legislator with voting rights alongside the European Council in the ordinary legislative procedure (Roos, 2015). The need to reach consensus with the European Council led the Parliament to moderate its position of promoting migrants' rights towards a much more restrictive orientation (Roos, 2015). The European Asylum Support Office (EASO) aimed to support Member States, especially those under particular pressure, in fulfilling their obligations and managing their asylum and reception systems by improving practical cooperation and information exchanges (EASO, 2012).

The Lisbon Treaty brought together two important legislative developments: the Blue Card Directive of 2009 and the Single Permit Directive of 2011 (Cerna, 2012; Beduschi, 2015). Both initiatives were part of the EU's plan to attract skilled migration: the Single Permit Directive unified the application process for residence and work permits for non-European citizens, ensuring a set of rights; while the Blue Card Directive aimed at issuing work and residence permits for non-European citizens linked to a highly qualified work contract or a binding offer, coupled with socio-economic rights (Eurostat, 2022). In 2010, the Hague program was replaced by the Stockholm program (Hatton, 2012). In the previous year, the EASO was inaugurated in Malta.

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<sup>1</sup> Qualified Majority Voting (QMV), also known as the 'double majority rule' is the voting system used when the Council of the EU votes on a proposal by the Commission or the High Representative of the Union for Foreign Affairs and Security Policy. A qualified majority is reached whether 55% of member states vote in favour; or the proposal is supported by member states representing at least 65% of the total EU population (Consilium.eu, 2024c).

Throughout 2013, the CEAS was subjected to a new round of reform of its various instruments. The Recast 2013/32 of the Asylum Procedures Directive introduced changes such as shorter times for processing applications, ensuring that the application was evaluated within six months. It also set a single procedure both for determining the eligibility for refugee status and for subsidiary protection (EU Monitor, 2013). Similarly, the Recast 2013/33 of the Reception Conditions improved in general the material reception conditions —including housing, healthcare, food, clothing and daily allowances—, and reduced from twelve to nine months the time limit within which applicants have access to the labour market (EU Monitor, 2013). There was also a review of the Eurodac regulation, to which national police and Europol were granted access (Orav, 2024). Finally, the Dublin III regulation which replaced the Dublin II regulation and introduced several improvements, like prioritisation of criteria related to family reunification; providing applicants with the right to appeal and request a review of the transfer decision and reducing the time limit for the various stages of the procedure (EU Monitor, 2013).

Formation of the CEAS		
Year	Instrument	Policy impact
1993	<u>Maastrich Treaty</u>	Establishment of a common migration policy to homogenise criteria and procedures for processing migration and asylum applications.
1995	<u>Schengen Agreement</u>	Ending of border controls between Member States, as well as the introduction of a single-entry visa and common requisites for its obtention.
1997	<u>Dublin Convention</u>	Establishment of a hierarchy of liability criteria for determining the responsibility of Member States in evaluating asylum applications
1999	<u>Treaty of Amsterdam</u>	Transferring of migration policy from the third pillar (Justice and Home Affairs) to the first pillar (European Communities), giving the European Commission the right to propose legislation from 2002.
1999	<u>Tampere Justice and Home Affairs Council</u>	The foundations of the CEAS were laid through the “Tampere program”, which sought to harmonise asylum

		through instruments such as The Receptions Conditions Directive; The Eurodac fingerprint database; The Qualification Directive; The Asylum Procedures Directives and Dublin II
<b>2004</b>	<b><u>Hague Programme</u></b>	Mainstreaming of asylum and migration in EU foreign policy as well as deepening of cooperation in areas such as the procedure for obtaining refugee status, access to social benefits and integration programs and sanctions in case of illegal return.

### 1.1. Limitations of the pre-crisis model

The functioning of the CEAS prior to the 2015 crisis already showed some weaknesses. First of all, it lacked an effective sharing mechanism for processing asylum applications, given that excessive responsibility was put in the coastal states. On a more general level, the pre-2015 framework was characterised by a disparity of policies and criteria in asylum procedures between Member States.

This mismatch between the Member States was evidenced by the fact that during the three decades prior to the onset of the migration crisis, only 40% of asylum seekers were granted refugee status. This statistic fed the belief that most asylum seekers were in fact economic migrants who lacked other legal routes, although refugee advocacy organisations argued that a large volume of applications that did meet the criteria were markedly excluded (Hatton, 2020).

The misgivings regarding the implementation of the Single Permit Directive can be seen as a reflection of the pre-2011 division among the Member States regarding a unified migration and asylum policy. On the one hand, some Member States including Austria, Germany, the Netherlands and the Czech Republic were against it, arguing the loss of sovereignty and advocating for non-binding recommendations instead of directives (Roos, 2015). This position contrasted with that of the French, Belgian and Spanish delegations in the Commission, which did not believe that the parity of social rights included in the Single Permit Directive should be restricted exclusively to those migrants entering the EU for economic purposes, as was demanded by the Austrian and German delegations.

Illegal immigration increased by 50% in the first quarters of 2011 compared to 2010 (around 112,800 people) due to the uprisings that were beginning to take place in North Africa (Frontex, 2011). At the time, Commissioner for Home Affairs Cecilia Malmström defended migration as a solution to the demographic challenge (Vogel, 2011a). This position contrasted with that of states such as Italy and Malta, the main receiving countries of refugees from Libya, which requested their relocation through

other states in the region (Vogel, 2011b). Thus, in the years leading up to 2015, Member States bordering the Middle East and North Africa region (Spain, Italy, Greece, Cyprus and Malta) formed a coalition advocating for a reform of the Dublin system to control what was described as an 'unmanageable influx' (Vogel, 2013a). The reality was that the refugee burden was unevenly distributed. The Dublin system forced asylum-seekers to file their applications more frequently in the country of arrival, which fostered the overburdening of the Southern Mediterranean states even further.

Frictions became evident: in May 2011, Malta refused to accept Frontex operating procedures and the "closest safe port" principle, demanding that landings of intercepted migrants took place in Sicily or Lampedusa (Di Filippo, 2013). However, these disagreements were not confined exclusively to coastal states, given French President Nicolas Sarkozy's demand (along with Italian Prime Minister Silvio Berlusconi) for a review of the Schengen system in April in view of the arrival in Lampedusa of approximately 25,000 Tunisians since January (Banchon, 2011; See Figure 1). Roberto Maroni, then Berlusconi's Interior Minister questioned whether it made sense to remain in the EU in the face of difficulties for equitable sharing (Donadio, 2011).

## Sarkozy and Berlusconi to call for return of border controls in Europe

**French president and Italian prime minister want to curb passport-free EU travel after row over north African immigrants**



*Figure 1: The Guardian headline on the demands of Sarkozy and Berlusconi to reintroduce border controls in Europe (2011, April 25).*

The weakening of the Schengen area was major evidence of the controversies between Member States arising from the implementation of the CEAS policies. Italy decided to grant temporary residence permits to refugees from Tunisia. On this basis, Belgium, Germany and Austria threatened to reintroduce border controls (Al Jazeera, 2011). France, for its part, invoked the temporary suspension of Schengen when it prevented the entry of trains from Italy on April 17, 2011, justifying the decision as a measure to safeguard public order (POLITICO, 2011). However, the controversy surrounding Schengen was not exclusively spurred by the arrival of migrants from North Africa. A coalition led by France and Germany blocked the access from Bulgaria and Romania, since this



would imply the absence of barriers with the largest access point of illegal immigration into the EU during 2010 (BBC, 2010). On the other hand, both the People's Parties in Denmark and Switzerland, which also imposed limits on long-term permits for EU migrants (Vogel, 2013), pushed anti-immigration rhetoric (Vogel, 2011f). Forecasts of immigration from Eastern Europe became one of the recurrent discussions in the run-up to the May 2014 European Parliament elections in United Kingdom, fuelling Brexit and Euroscepticism (Vogel, 2013b).

The weaknesses of the CEAS were also evident in the unsystematic application of border control policies and recurring humanitarian catastrophes. Perhaps the most paradigmatic example was the tragic Lampedusa shipwreck in October 2013 (when a boat transporting migrants from Libya to Italy sank, causing more than 360 deaths). Following a meeting of the European Council that same month of the European Council, the European Commission produced a report with 38 measures aimed at curbing illegal immigration, which did not lead to substantive policy changes due to the proximity of the European Parliament elections (Vogel, 2013b). However, one response that did prove effective was Operation Mare Nostrum, launched by the Italian government. Throughout the twelve months it was active, the Operation Mare Nostrum managed to span 70.000 square kilometres of the Mediterranean, to rescue nearly 156.400 irregular migrants, and to arrest more than 350 smugglers. The refusal of the rest of the Member States to contribute to its funding and the increasing anti-immigration sentiment in the EU as it were considered a 'pull-factor' behind its cancellation (Lloyd-Damjanovic, 2020).

In this scenario, the CEAS began to be characterised by cooperation with North African transit states under the premise of democratic promotion and the review of the European Neighbourhood Policy. This was the case with the 2014 Tunisia-EU Mobility Agreement for the management of irregular borders and migration flows, which complemented the previous funding aimed at boosting economic growth and reforming the judicial system in Tunisia (European Commission, 2014). Another paradigmatic agreement in this regard is the Memorandum of Understanding signed between Frontex and Türkiye in May 2012, which was followed by the Action Plan for the Implementation of Institutional Coordination with the EU between 2014 and 2016. Such cooperation was not exclusively the result of the unprecedented arrival of Syrian refugees since the beginning of the civil war in 2011, but also of the alignment with the *Acquis communautaire* in the framework of the EU accession process (Muftuler-Bac, 2011). Along the same lines we find the Mobility and Migration Partnership with Morocco in 2013 (European Commission, 2013), and the Agenda for Migration Cooperation agreed with Libya by the European Commission in 2010, by which concrete measures were agreed for border surveillance and against migrant smuggling, and which was accompanied by an increase in financial support of 60 million euros for internal reforms (European Commission, 2010).

Even though the official rhetoric accompanying these processes was developed in terms of promoting internal development, capacity building, fostering legal and safe pathways, and strengthening protection and migration management systems; third sector organisations and human rights advocates, as well as detracting voices within governments and civil society, including François Crépeau, UN Special Rapporteur on the human rights of migrants (Humans Right Watch, 2014), pointed out how in practice this entailed an exercise of externalisation of borders, in which

systematic violations of international humanitarian law occurred at the hands of EU funds recipient states (Lemberg-Pedersen, 2015). These criticisms towards the securitisation of borders would intensify from 2015 onwards, pointing at its incongruence with self-appointed European values and ethos and one of the great vulnerabilities of the CEAS.

## 2. European migration crisis

Between 2015 and 2016 (See Figure 3), more than 1.8 million people arrived irregularly from the Middle East, specifically from Syria after the start of the civil war in 2011, North Africa and South Asia. This caused an unprecedented volume of asylum-seekers. The great influx of arrivals and the inability of Member States to manage it led to what has been referred to as the biggest migration crisis since World War II (European Union, 2017). However, some argue that the so-called ‘European migration crisis’ was in fact the crisis of European migration policies (Bojadžijev & Mezzadra, 2015). During that period, the weaknesses of the CEAS were exposed: the imperfect definition of EU competencies, the competing interests of Member States and divergence in the implementation of instruments and policies at the national level. The response articulated by the Commission was based on the creation of new institutions and the continuation of collaboration with the Mediterranean states of North Africa and the Middle East, deepening the externalisation of borders (Gladysz & Sychov, 2020).

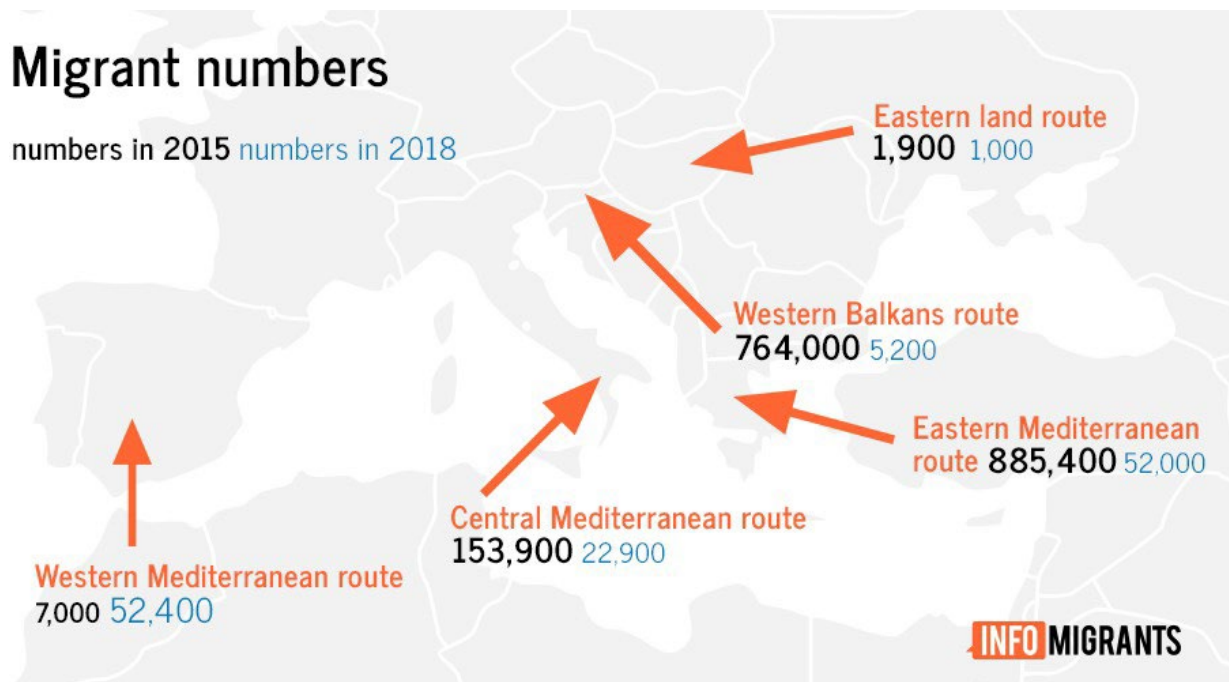


Figure 2. Migrant numbers and routes in 2015 and 2018

Source: [InfoMigrants](#)

The arrivals came mainly from three migration routes (See Figure 2). In the first place, the Western Mediterranean route' was traversed by approximately 7.000 people and refers to the arrivals to Europe through Spain or the enclaves of Ceuta, Melilla or the Canary Islands (UNHCR, 2024). It usually involves crossing the Mediterranean from different points along the West African coast such as Morocco, Algeria, Western Sahara, Mauritania, Senegal or Gambia. Secondly, the Central Mediterranean Route accounts for those arrivals to Italy and Malta from Algeria, Tunisia and Libya (IOM, 2024). In 2015, it was crossed by 153.946 people. Lastly, the majority of migrant arrivals were made on the Eastern Mediterranean route (885. 386 people), which includes irregular arrivals made through Greece, Cyprus and Bulgaria. Often included is the Western Balkans route, which takes as an entrance point Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia (European Council & Council of the European Union, 2024a).

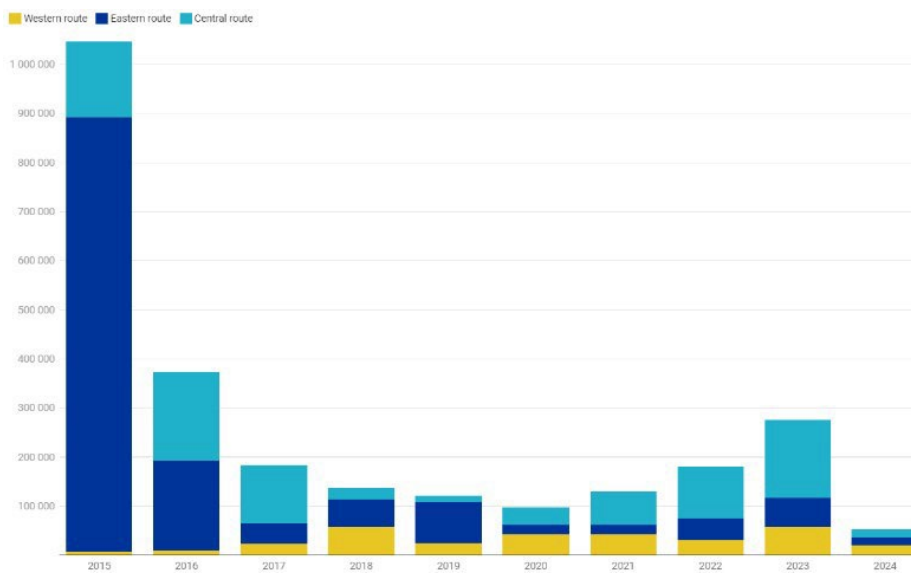


Figure 3. Yearly irregular arrivals from 2015 to 2024 divided by European Migration Routes

Source: [European Council and Council of the European Union](#)

As early as February 2015, António Guterres (then United Nations' High Commissioner for Refugees), described the EU's asylum policy as "dysfunctional" and called for a harmonisation of asylum criteria (Kroet & Panichi, 2015). Hotspots were established in Greece and Italy with the objective that after having their claims assessed, migrants could be returned if rejected or resettled within Europe if successful (European Parliament, 2023).

Throughout 2015, the EU tried to financially support those states in the Southern Europe as well as in the Western Balkans that assumed an overload of asylum applications and irregular arrivals by allocating additional funding. For instance, in February the Commission granted Italy 13.7 million of euros from the Asylum, Migration and Integration Fund, on top of the more of 500 million of euros that had been already conceded for dealing with migratory pressures for the period of 2014-2020

(D'Alfonso, 2015). In August, the Commission disbursed additional 2.4 billion of euros for other countries besides Italy such as Greece, Italy, Austria, and Hungary (Barigazzi, 2015). Additional funding was one of the measures included in the European Agenda on Migration, approved by the European Council in May, besides increasing the capacities and resources of the Triton and Poseidon operations —which replaced Operation Mare Nostrum— and the relocation of refugees (Kroet, 2015a).

In that same year The European Agenda on Migration called for the relocation of 40.000 refugees situated in Greece and Italy and 20.000 from outside the EU. In September, the European Council approved the relocation of another 120.000 asylum applicants arrived in Italy in Greece within 24 months until 2017 across 28 Member States, excluding United Kingdom and Denmark, even though the previous relocation quota had not been completed. The measure was mainly supported by Germany and France (Benková, 2017). The relocation decision became a source of tension: Slovakia, Hungary, Romania and the Czech Republic took a stand against it but were outvoted through Qualified majority voting (Gladyshev and Sychov, 2020). Despite that, Slovakia took the EU to the European Court of Justice over refugee relocation quotas, alleging they were “nonsensical and technically impossible” (Von Der Burchard and Barigazzi, 2015).

The unwillingness to contribute to the sharing system was coupled with active efforts by some Member States to stop irregular arrivals on national ground. From March onwards, Home Affairs ministers agreed to implement systematic checks for those entering the Schengen area. In addition, temporary suspensions of Schengen were introduced throughout 2015 and 2016 by eight states: Austria, Belgium, Denmark, Slovenia, Hungary, Norway, Sweden and Germany on the basis of Article 25 of the Schengen Borders Code (Benková, 2017).

Disagreements surrounding the Dublin system were particularly pronounced in the Balkan region. An agreement was reached in October between Western Balkans States to further cooperation on migration through tighter controls on refugees coming from the Middle East (Oruc *et al.*, 2020). “Tighter controls” also meant building physical fences at their respective borders. In September, Hungary built fences on the border with Austria and Serbia, closed its border, and changed the law to make illegal entries punishable by up to eight years in prison (Januzi, 2022). That meant that the flow from the Western Balkans route was redirected to Croatia and Slovenia. Slovenia, for its part, built a fence in November on the border with Croatia (AFP, 2022). Croatia had as well closed the eight border crossing points with Serbia in September (Regan, 2015). Northern Macedonia also built a fence on the Greek border in November, after declaring the state of emergency three months earlier due to the entry of more than 6.000 people in four days (Kroet, 2015b).

In this context, the EU kept supporting the collaboration with third states. In October, the EU–Turkey Joint Action Plan was approved, by which the EU vowed to transfer €3 billion to Türkiye in exchange for Türkiye to prevent those refugees from arriving in Greece. Türkiye also obtained an agreement from the European Council to liberalise the visas from Turkish citizens travelling to Europe. Another instrument with an alike objective was the EU Emergency Trust Fund for Africa in November, which aimed to “address root causes of irregular migration and displaced persons in Africa.” So far, the Trust Fund has mobilised up to almost €465 million for migration control in Libya (DG INTPA, 2024).

The year 2016 saw a noticeable decline in the number of illegal entries. Donald Tusk, President of the European Council at the time declared the “migration crisis” as an “existential challenge for the EU” (Chetail, 2016). The Netherlands assumed the presidency of the Council of the EU and made fixing the reduction of migration as one of its main priorities. In this sense, the increase of 3 billion euros of financial allocation to Türkiye for humanitarian assistance played a key role in reducing the number of arrivals on European territory. Syrian refugees. In March 2016, the Commission agreed that for every Syrian migrant that Greece prevented from arriving in Türkiye, the EU would resettle a Syrian refugee to Turkey. This implied the closure of the Western Balkan route, transferring the main access point from Greece to Bulgaria. By April of 2016, only 208 refugees out of those 160.000 agreed in September had been relocated (European Commission, 2016a).

The inability to engage Member States in the distribution of asylum seekers and the disparities in the material conditions of reception exposed the inoperability and the need to reform the CEAS instruments. The Commission urged those Member States that had not still contributed to the Türkiye fund to do so and, in April 2016 communicated the reform of the CEAS to ‘enhance legal avenues to Europe’ (EU Monitor, 2016). The reform intended to transform the Asylum Procedures and Qualification directives into regulations to speed up procedures or to count with systematic and regular revision of the protection granted as well as discouraging secondary movements inside the EU (Vues d’ Europe, 2019).

Its first package included a revision of four instruments. Firstly, a new reform of Dublin III was put forward. The new Dublin IV brought in a fairness mechanism under which, if a limit of asylum application was surpassed, these would be redistributed among other Member States that were under less migratory pressure. Member States were required to pay 25,000 euros for each asylum seeker turned down (EU Monitor, 2016). Secondly, EASO was replaced by the European Agency for Asylum (EAA). On top of its previous competences, the EAA was expected to assist Member States under major migratory pressures with technical and operational support (European Union, 2024). Finally, the Commission also proposed to review the Eurodac regulation to include the possibility of a data base to gather information of non-nationals or stateless persons in an irregular situation, regardless of asylum seeker status (European Parliament, 2024a). Additionally, in June, the Commission proposed the reform of the Blue Card directive, so Member States were able to adjust salary levels for migrants by creating a flexible range (European Commission, 2016b).

In July, the Commission put forward the second package of proposals for CEAS reform. It comprised the reform of the Qualification Directive, the reform of the Asylum Procedures Directive and targeted modifications of the Reception Conditions Directive (European Parliament, 2024d). Also, a proposal for a Union Resettlement Framework was submitted by the Commission to further common standards in the admissions of asylum seekers from third countries and resettlement procedures (European Council & Council of the European Union, 2024b). In September, Frontex was transformed into the European Border and Coastguard (EBCG), with more competences and budget (European Border and Coast Guard Agency, 2019).

However, most of the reforms proposed never were actually approved, partly because its "package logic" harboured the expectation of a joint approval of all instruments. Some instruments caused frictions between Member States. For example, the fairness mechanism within Dublin IV was

controversial and reached an impasse during inter-institutional negotiations (European Parliament, 2024). Regarding Eurodac regulation, after trilogue negotiations started in September 2017, the Parliament and the Council reached a provisional agreement (European Parliament, 2024a). By 2020, unfinished work remained for the reform of the Blue Card Directive (European Parliament, 2024e). The Qualification Directive managed to reach an informal provisional agreement between the European Parliament and the Council after trilogues in June 2018; however, there was no final endorsement in the Council and the Austrian presidency returned the file to negotiations (European Parliament, 2024b).

### 3. New Pact on Migration and Asylum

The gridlock produced by the inability to reach consensus over the CEAS reform after the migration crisis was prolonged until September 2020, when the EU finally reached an agreement to introduce a New Pact on Migration and Asylum. In its communication, the European Commission presented a set of measures aiming to represent a “fresh start” to address migration management (European Commission, 2020). In 2023, with Spain holding the European Council presidency, this initiative took centre stage, seeking to address the contentious migration issues plaguing the Union. By autumn, negotiations had reached their final phase, culminating in a significant political agreement on 20 December 2023 among the European Commission, the Council, and the European Parliament. This milestone agreement paved the way for technical negotiations and formal adoption in 2024.

Despite the Commission’s framing of the New Migration Pact as a paradigm shift, it presents an adjustment of the existing Dublin system, which remains the cornerstone of EU migration policies. The new pact introduces mandatory solidarity contributions from all Member States, aiming to distribute responsibility more evenly across the Union while recognising the unique challenges faced by frontline states. While exceptions will apply, this principle seeks to ease the pressure on countries like Italy and Greece, who have long been the first ports of call for asylum seekers entering Europe. However, the Pact also places increased responsibilities on countries at the EU’s external borders. These nations will be primarily responsible for the initial reception, screening, and processing of migrants, including conducting security and health checks. This heightened responsibility underscores the importance of robust border management, necessitating enhanced support and resources for these frontline states.

Another pivotal aspect of the pact is the emphasis on stronger border and migration management through partnerships with third countries. This multifaceted approach includes pre-entry screening procedures, expedited asylum processes, and flexible solidarity mechanisms. By replacing current directives with new regulations, the pact aims to ensure consistent implementation across all Member States, thereby boosting the overall efficiency and effectiveness of the EU’s migration and asylum policies.

To address inconsistent implementation across Member States, the pact will replace existing directives with new regulations. This standardisation aims to ensure uniform application of asylum and migration policies across the EU:

- The **screening regulation**, for instance, establishes a pre-entry screening procedure for irregular third-country nationals, enabling national authorities to conduct health and vulnerability assessments and swiftly determine the appropriate procedures. However, civil society organisations have raised the alarm about the potential for ethnic profiling, given the discretion granted to national authorities in conducting these checks (Barker, 2023).
- The **asylum procedures regulation** seeks to streamline asylum, return, and border processes. It includes targeted changes to address the most contentious issues, such as border procedures and returns. The regulation expands and mandates the use of border procedures, particularly for nationalities with low recognition rates, allowing for quick assessment of asylum applications. These procedures, which can take up to 12 weeks, will occur near EU external borders or in transit zones. Controversially, they do not exempt underage children and families from this expedited process.
- Moreover, the **asylum and migration management regulation** introduces a mandatory but flexible solidarity mechanism triggered during times of disproportionate pressure on any member state. An annual a solidarity pool will be established, allowing EU states to choose between relocation obligations or financial contributions. These contributions can support capacity-building within the EU or actions in non-EU countries directly impacting migration flows towards the EU, including return operations.
- The **crisis and instrumentalisation regulation** grants Member States the ability to deviate from standard rules during "crisis situations". This provision enables adjustments to certain rules concerning the registration of asylum applications and border procedures while requesting additional solidarity measures. This flexibility is intended to ensure that Member States can effectively manage sudden and large influxes of migrants.
- **Eurodac**, the EU's asylum fingerprint database, plays a crucial role in the New Migration Pact. It helps track the movement of asylum seekers within the EU, ensuring that the new regulations and procedures can be effectively monitored and enforced.

The journey towards adopting the New Migration Pact has been complex and multifaceted. On 23 September 2020, the European Commission presented the Pact. On 22 June 2022, the Council adopted the main elements of the first stage of the European policy reform on asylum and migration. The same day, the European Parliament and the rotating Presidencies of the Council signed a joint roadmap, aiming to finalise negotiations on all proposals by February 2024. On February 8, 2024, the Committee of Permanent Representatives approved the provisional agreements. The European Parliament approved the Pact on 11 April 2024 while the Council followed suit one month later, on May 14.

Despite its ambitious goals, the New Migration Pact has several shortcomings. Responsibility for receiving refugees still rests largely with the Member States at the EU's external borders, which could lead to increased pushbacks and violence as these countries struggle to manage the influx of migrants. On top of that, the agreement allows countries to avoid complying with the established rules whenever a "crisis" strikes, in case of so-called "instrumentalisation" of migrants or 'force majeure' (Amnesty International, 2024). This provision undermines the principle of shared responsibility, potentially leading to inconsistent application of the pact's measures, especially when the terms "crisis" and "force majeure" remain undefined (International Rescue Committee,

2024). Similarly, under a clause aimed at making the solidarity mechanisms “flexible”, Member States are allowed to opt out of hosting responsibilities by making financial contributions instead. This effectively monetises solidarity, with a cost of €20,000 for each asylum seeker not relocated, and shifts the focus from humane reception and integration to financial transactions aimed at migration control.

In that sense, more than 160 civil society organisations have condemned the New Migration Pact for severely limiting the right to asylum (PICUM, 2024), what some left-wing political parties have described as “the death of asylum” (The Left, 2024). The Pact introduces a preliminary screening stage, allowing for the detention of asylum seekers for up to 12 weeks while their claims are processed. During this period, applicants are legally considered to be outside European territory. This legal fiction reduces the responsibilities of states towards asylum seekers, increasing the likelihood of rights violations (See Figure 4). Additionally, the pact enhances expedited border procedures for assessing asylum applications. These accelerated processes often jeopardise procedural standards, such as limiting access to legal advice, conducting inadequate evaluations of applicants' vulnerabilities, and restricting opportunities to appeal decisions. (Pasetti, 2024). Also, according to the asylum procedures regulation, migrants from countries with recognition rates below 20% could be detained for up to 12 weeks in holding centres in border countries. This disregards individual circumstances that could justify applying for asylum or international protection (International Rescue Committee, 2024).

## The EU’s migration policies and the end of human rights in Europe

*The direction Brussels is taking on migration policies risks eroding the international legal order.*



**Matthaios Tsimitakis**  
Journalist based in Athens



12 Feb 2024

*Figure 4: Al Jazeera headline on the risks that the New Asylum and Migration Pact poses to human rights protection (2024, February 12).*

In addition, the New Migration Pact places significant decision-making powers in the hands of Member States, limiting the European Parliament’s role in determining the exact functioning of annual solidarity contributions and responsibility offsets (Neidhardt, 2024). As an example, the Asylum Procedure Regulation includes the novel concept of the “Safe Third Country,” which enables Member States to reject asylum applications if effective protection and no risk of persecution or removal are ensured in a third country (Düpont, 2024). The definition of what constitutes a “safe third



country” rests in the hands of each Member State, therefore risking lax and broad definitions that may include countries that do engage in certain kinds of human rights violations.

While national governments retain flexibility in choosing solidarity measures, the centralised aspects of the Screening Regulation and Asylum Procedures Regulation reduce discretion concerning border procedures, aiming for a more harmonised implementation across the EU. Beyond criticism, civil society organisations have positively valued some aspects of the new Pact, such as the new Union’s Resettlement Framework, which is regarded as a necessary step towards the creation of safe routes (International Rescue Committee, 2024).

The changes introduced by the Pact have garnered varying levels of support and opposition. Three main “opinion blocs” could be observed among Member States: The Northern and Central European States (such as Germany and France), the Southern States (Spain, Italy, Greece, Malta) and the Visegrad group (Czech Republic, Slovakia, Hungary, Poland). Firstly, the deal was welcomed and received with strong support in major European capitals. Indeed, frontrunners of the project such as Germany and France saw the New Pact positively and supported the initiative. In a call for unity, they promoted negotiations to make the improvements necessary for the deal. One of the main demands of Central and Northern states, as asylum seekers’ preferred destination, was to prolong the period in which countries of entry were considered responsible for immigrants (González Enríquez, 2024).

In turn, Southern countries, grouped in the MED5 —Spain, Italy, Greece, Malta and Cyprus—, initially raised concerns about the removal of relocation quotas in favour of the solidarity mechanism, fearing increased pressure on their resources and questioning the adequacy of measures addressing legal migration. Despite Italy’s veto on an initial compromise, Rome eventually joined the effort after language in favour of the role of NGO missions to rescue migrants at sea was dropped from the text proposal (See Figure 5). This was described as a defeat of the German Greens, which had pushed for its inclusion (Sorgi & Barigazzi, 2024, See Figure 5). In fact, at that point of the negotiations, Italian support was not necessary to achieve the vote threshold. However, diplomats on the negotiating team insisted that Italy’s support was crucial to ensure the political feasibility of the Pact (Sorgi & Barigazzi, 2024). In June 2022, Italy, Greece, Malta and Cyprus published a joint statement in which they stated that despite the approval of a temporary and voluntary relocation scheme, it was a concession against their original interests (Joint Statement Med5, 2024).

## **Meloni claims win as EU approves final plank of migration reform**

*Italy backed deal after winning a symbolic concession on humanitarian rescue missions.*

*Figure 5.: POLITICO headline on the concession made to gather support by Italian PM Georgia Meloni (2023, October 4).*

The staunchest opposition to the New Pact came from Eastern Europe with the Visegrad group, stating on multiple occasions that they were completely against taking in further immigrants. In this sense, the Eastern European countries' demands of no mandatory relocation came in direct confrontation and opposition with Southern European pushes for those very mechanisms. The emphasis placed by the deal on "flexible solidarity mechanisms" and the ability for states to make financial or alternative contributions if they did not want relocation was a concession for the Visegrad countries (Rodríguez-Pina, 2023). In the years of negotiations, Hungary voted against the package in the Council. Two other Visegrad states, Slovakia and the Czech Republic, also maintained their scepticism and abstained from most of the provisions included in the New Pact (Liboreiro, 2024). Given that the voting procedure was based on qualified majority, this opposition was not enough to block the deal. The challenge now rests upon ensuring the compliance of these states, with Polish Prime Minister and former President of the EU Council Donald Tusk stating shortly after the vote went through that he would "protect Poland against the relocation mechanism" (Reuters, 2024, See figure 6).

Europe

## Poland won't accept migrant relocation mechanism, PM says

By Reuters

April 10, 2024 6:46 PM GMT+2 · Updated 3 months ago



Figure 6: Reuters headline on Polish opposition to the migrant relocation mechanism (2024, April 10).

In sum, the New European Migration Pact represents a significant step forward in addressing the complex challenges of migration within the EU. While it introduces important reforms aimed at enhancing efficiency and responsibility-sharing, it also faces significant criticism and risks. The success of the pact will depend on its implementation and the willingness of all Member States to uphold the principles of shared responsibility and human rights. As the EU moves towards formal adoption of the pact in 2024 and its expected entry into force by 2026, addressing these concerns will be crucial to ensure that the new framework provides a fair, humane, and effective approach to migration management.

### Conclusion

A quick overview through the evolution of migration and asylum policy in the EU shows that it remains one of the main challenges for the block in the upcoming decades. Efforts to achieve a unified implementation of migration policy and responsibility-sharing principles have been met with resistance among Member States. The first attempt to achieve a unified framework was the creation of the CEAS, established to harmonise asylum policies and manage the influx of migrants. The system faced substantial criticism due to its inconsistent implementation and the unequal burden placed on frontline states. The 2015-2016 migration crisis exposed these weaknesses, highlighting the need for a more cohesive and supportive approach.

Despite its ambitious objectives, the New Pact on Migration and Asylum remains a contentious solution. While it strives to balance responsibility among Member States and streamline asylum procedures, it has faced criticism from civil society organisations and some political groups for potentially undermining asylum seekers' rights. The discretionary power granted to national authorities and the possibility of detention during preliminary screening stages raise significant ethical and legal concerns. Additionally, the divided support among Member States, with rifts between Northern, Central, Southern, and Visegrad countries, underscores the enduring tensions between attempts to manage migration supranationally and Member States' willingness to retain national competences on this matter. Ultimately, while the New Pact represents a step towards more coordinated migration management, its success will depend on Member States' willingness to comply with watered-down responsibilities and ensuring that humanitarian principles remain at the forefront of policy implementation.

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