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There is no appetite to make Europe more welcoming

Political pressure is high to finalise the EU Pact on Migration and Asylum. But it won't be the silver bullet to the EU's asylum troubles

Negotiations on the EU Pact on Migration and Asylum have reached the finishing line, as EU Member States' interior and migration ministers meet on 4-5 December, and an interinstitutional agreement on several files between the European Parliament and the Council is supposed to be reached this month. Unfortunately, it is already clear that the Pact won't magically fix the EU's asylum and reception problems; instead, it will erode access to asylum in Europe and the rights of people seeking protection. A fresher take is needed to strengthen the right to asylum, solidarity and social cohesion.

Regrettably, too often, dignified reception is mistakenly considered as a 'pull factor' that attracts migrants; therefore, deplorable, or the outright absence of reception are sometimes a conscious political choice to try to reduce arrivals. Ironically, CSOs and volunteers are often the ones bridging the gap to preserve people's dignity but are criminalised for doing so.

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EU law on reception is regularly ignored, with terrible – and sometimes deadly – consequences for migrants. From Greece to the Netherlands, images of people – including children – cramped in undignified makeshift camps have become too common. Caritas France and a group of NGOs recently warned of a catastrophic situation in Calais and Dunkirk, where the lack of shelter and sanitation are putting migrants' lives at risk.

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families found themselves in this situation at the end of 2022. This issue has been going on for almost two years now. Belgium has been condemned more than 8 000 times by European and national courts for breaching EU and national law by not providing adequate reception conditions. This is the same Member State that is expected to finalise the negotiations on the EU Pact under its EU presidency starting in January 2024.

The EU Pact: more problems than solutions?

With the European Parliament elections fast approaching (elections are scheduled for June 2024), political pressure is high to finalise the EU Pact on Migration and Asylum, a set of legislative proposals launched by the European Commission in September 2020. Far from being the last-ditch attempt to put the EU's asylum system in order, the Pact won't be the silver bullet to the EU's asylum troubles for at least two reasons.

Firstly, the Pact seeks to keep people crossing the EU's border in the first country they enter. The underlying objective is to prevent them from moving further in the EU to avoid their so-called secondary movement and to speed up possible returns to their country of origin or transit. Already in 2020, we highlighted the tremendous detrimental impact the Pact risks having on people seeking protection in Europe, based on the implementation of similar policies in the hotspots in Italy and Greece. These include overcrowded reception centres, widespread detention, rushed procedures, lack of access to legal support and appropriate care for vulnerable groups.

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Secondly, the Pact will reduce access to protection in Europe by generalising fast-track asylum procedures at the border with restricted safeguards and appeals. Widespread detention and likely poor reception standards will be implemented in strained border countries, including for children and people with specific needs.

The new screening mechanism introduced in the Pact could also increase the discriminatory practice of racial profiling. In addition, a series of exceptional measures will be at governments' discretion to delay access to the asylum procedure and prolong detention at the border in cases of crisis, *force majeure* or an 'instrumentalisation' of migrants by non-EU countries, a very loose and controversial concept.

Given how complex the new rules are, poor implementation is predictable, as is the practice of overwhelmed EU border states to prevent people from reaching their territory, including through violence.

Shifting responsibilities

With a new flexible solidarity mechanism – under which Member States can choose the type of solidarity they provide – unlikely to compensate for the increased responsibility that will fall on EU border states, the Pact certainly won't usher in a new asylum era. The decision against drastically revising the dysfunctional Dublin system, which makes the EU country where an asylum seeker first arrives responsible for processing the asylum claim, is a big missed opportunity. In addition, relocation won't be the main form of solidarity to alleviate countries under pressure, especially when states can literally buy themselves out of this responsibility. The 'asylum lottery' illustrating the widespread difference in the protection rate and asylum and reception standards from one country to another is likely to last, perpetuating the incentives for secondary movement.

Since creating real solidarity has failed, EU Member States have decided to focus on externalisation policies, which aim to shift asylum responsibility to non-EU countries – usually transit countries with a questionable human rights record – to prevent arrivals and speed up return. Never mind that externalisation often exposes migrants to the risk of refoulement and human rights violations.

Cooperation with Libya, Turkey and Tunisia, as well as the Italy-Albania deal, are part of this externalisation trend, which is at the core of the EU Pact. Several provisions of the Pact, such as the expanded use of the 'safe third country concept', aim at facilitating the transfer of asylum seekers to non-EU countries.

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Until now, the most extreme externalisation projects have failed due to a series of practical and legal obstacles, as shown by the UK Supreme Court judgment that declared the UK-Rwanda deal illegal on 15 November 2023. And in 2018, the EU Members States' push for the creation of external processing centres in non-EU countries was mostly deemed illegal by the European Commission's analysis. Despite this, externalisation is once again emerging in the EU.

In increasingly polarised societies, where fear, hatred, violence and racism against migrants are fanned by politicians to win votes, there appears to be no appetite to make Europe more welcoming. Fear-mongering seems to be a convenient distraction from trying to structurally curb the rising inequality and poverty in Europe. At the same time, Europe's protection standards and human rights are downgraded in a race to the bottom that jeopardises our democratic values.

The unprecedented solidarity towards refugees from Ukraine shows what the EU can do when there is strong political will. Another asylum system is possible, with strengthened and dignified asylum and reception provisions respecting human rights and family reunification. The European Commission must monitor the implementation of EU law and enforce sanctions in case of breaches, violence or pushbacks because the rule of law itself is at stake. Ultimately, we need true solidarity within the EU, with a fairer repartition of asylum seekers, relocation and some leeway to allow freedom of circulation for asylum seekers and refugees.

Crucially, the EU must allow safe and regular pathways for people in need of protection – through resettlement and humanitarian visas, for instance – but also for employment. Otherwise, people trying to reach Europe will keep on dying at sea. Finally, strong and well-funded integration policies are needed to foster participation in society and social cohesion. People will continue to come to Europe. Instead of fuelling division within our societies and pursuing the illusion that blocking human mobility is possible and desirable, politicians should better invest in human-rights-based and dignified policies to the benefit of everyone.

For a different perspective on the CEAS reform, read here.



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