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New pact, old problems

The EU's new migration pact doesn't offer a truly novel approach. Nevertheless, it is certainly better than the status quo

The recent destruction of the Moria refugee reception facility on the Greek island of Lesbos was probably the timeliest possible reminder of the urgent need to fix Europe's dysfunctional asylum system.

The fire that ravaged the camp on the night of 8/9 September, leaving thousands of refugees homeless, broke out just three weeks before the planned publication of the European Commission's long-awaited asylum reform proposal. The launch of the New Pact on Migration and Asylum, as it is formally called, was anticipated as a result and presented only two weeks after the Moria fire.

The New Pact is a large and very complex package of legislative and non-legislative proposals that the Commission carefully crafted after almost a year of prior consultations with various stakeholders. EU member states were in particular focus in the run-up to the New Pact's publication, as deep divisions between them over the question of refugee relocation – a key and controversial element of the last reform proposal – have stalled progress on asylum-related files since 2015.

As a result, the package already reads as a compromise well before formal negotiations within and between the European Parliament and Council have begun.

The three-floored fortress

Commission President Ursula von der Leyen and her colleagues, Vice President Margaritis Schinas and Commissioner Ylva Johansson, likened the New Pact to a house with three floors. To many civil society stakeholders, though, that house looks a lot like a fortress.

The first floor is a strong external dimension, calling for a comprehensive set of agreements with countries of origin and transit to counter migrant

smuggling, reinforce border control, strengthen their own asylum systems and facilitate returns from Europe.

The second floor is focused on the EU's own border management. It includes a mandatory screening for irregular entries at all external borders, as well as an expedited asylum procedure for new arrivals deemed to be unlikely to receive international protection status.

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The third floor of Fortress Europe is about solidarity between member states when it comes to reception and return. Voluntary solidarity is encouraged at all times, but a mandatory solidarity mechanism would kick in if individual member states find themselves overburdened with irregular arrivals.

The question of solidarity is certainly the most delicate and difficult issue to find compromise on among member states, particularly with the Visegrád countries of Central and Eastern Europe that have categorically rejected the concept of refugee relocation from frontline member states for years. The Commission came up with a creative solution to this dilemma: return sponsorship. According to the New Pact, member states would not be forced to accept relocated refugees but could opt to take responsibility for the return of failed asylum seekers instead. This sponsorship scheme would not even require the sponsor to physically host the returnee unless the return process is delayed by more than 8 months (or 4 months in a high-pressure situation).

Visegrad vs. the South

From a political perspective, return sponsorship is a justifiable attempt to obtain at least some sort of tangible solidarity from the Visegrad countries (as well as Austria, which has increasingly associated itself with their views on migration). However, this approach raises several operational questions.

Returning failed asylum seekers is notoriously difficult, even for countries that have well-established diplomatic ties with the country of origin in question. Will member states with less return experience succeed while handling cases at a distance? Will they really be willing to receive returnees who are still in limbo after the predetermined timeframe? What if more member states opt to sponsor returns rather than relocate refugees who have the right to stay?

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On the other side of the political divide, frontline member states in Southern Europe are still likely to be left with the brunt of the reception burden despite return sponsorship from other countries. Though formally replacing the current Dublin Regulation's criteria for determining the member state responsible for processing an asylum claim, the New Pact maintains the criterion of first arrival location. As a result, Cyprus, Greece, Malta, Italy, and Spain would be responsible for processing the asylum claims of most irregular arrivals crossing the Mediterranean Sea – at least in 'normal' times.

Lessons learned from 2015?

The Commission proposed a rather complex mandatory solidarity mechanism to ensure support for frontline member states facing higher than average migratory pressure in times of 'crisis'. Without going into too much detail, the mechanism foresees a four-stage approach that would start with an initial trigger, followed by a needs assessment and common response in which member states would have the flexibility to decide what kind of support they would be willing to provide. If the offers do not match the needs, a correction procedure would be initiated.

According to the proposal, the Commission would play a central role in determining which legally binding measures would need to be provided to the member state in need of assistance. However, it is questionable whether governments would allow the Commission to make these kinds of decisions – they may seek to revise the proposal to give the Council more control.

Will all these measures avoid a new humanitarian emergency at Europe's external borders? Will the fundamental rights of asylum seekers be respected in every member state and at sea? Vice President Schinas told members of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs that 'Moria is there to remind us everything that we need to do differently in Europe'.

Yet in its attempt to find a compromise that everyone can accept, the New Pact does not offer a truly novel approach to the irregular migration and asylum challenges Europe faces. Nevertheless, it is certainly better than the status quo and it is the EU's last chance to at least improve a

broken asylum system in desperate need of reform.



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