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# One step closer to getting the EU Migration Pact done. One step closer to ambitious change?

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# Executive summary

Under pressure to deliver long-awaited reforms, EU Interior Ministers reached a historic agreement on how to process and relocate asylum seekers on 8 June.

While showing pragmatism and introducing mandatory solidarity, the deal does not overhaul the current system. In fact, it preserves many of its structural elements and shortcomings. If adopted as they stand, the new rules would not change the criteria for establishing responsibility for asylum seekers. Instead, they would place greater pressure on member states at the EU's external borders to register and process asylum applicants, with limited guarantees that the solidarity mechanism devised would work in practice.

This raises questions about the upcoming negotiations with the European Parliament and, in the longer run, public expectations about their impact on the ground. If the negotiations do not deliver reforms that can effectively improve the European asylum system, it will not only undermine trust between member states. It will also undermine citizens' confidence in the EU and its capacity to manage the migration phenomenon like any other societal matter. Should the reforms be adopted, citizens will expect the new system to work better than the old one. But there is a risk that the reforms will fail to deliver the expected results, leading to further polarisation and social tensions.

# Introduction

In the face of protracted negotiations that were edging close to its final weeks at the Council's helm,<sup>1</sup> on 8 June, the Swedish Presidency put to the vote compromise texts on two vital elements<sup>2</sup> of the EU asylum system<sup>3</sup>: the rules governing the processing of asylum applications and those determining the state responsible for applicants, including a corresponding solidarity mechanism.<sup>4</sup>

Following a day of hard bargaining and mediation,<sup>5</sup> an unexpectedly large share of member states supported the proposals, surpassing the threshold needed for a qualified majority.<sup>6</sup> In what was regarded as a turning point, Italy was eventually convinced to get on board after some concessions were made on how to apply the notion of safe third country, making it easier to carry out returns to transit countries.<sup>7</sup> Poland and Hungary voted against the proposals, and four other countries abstained – Malta, Bulgaria, Lithuania and Slovakia – paving the way for the “historic” agreement.<sup>8</sup>

While the Council's vote shows a welcome degree of unity – not unanimity – the pressure to deliver long-awaited reforms pushed most member states to accept significant compromises. Yet, the texts greenlighted by member states would not fundamentally change the architecture of the existing asylum system. If anything, they would reinforce its structural elements. Triologue negotiations will now start. Although some sticking points can already be identified, the Parliament and the Council both have a lot to lose by not getting the New Pact done.

## 1. How the compromise emerged: Between a rock and a hard place

Although they ascribe this to different reasons, there is consensus among EU states that the Common European Asylum System (CEAS) urgently needs to be fixed. The rules currently in place suffer from poor design and even poorer implementation. This conviction emerged at the June vote and in discussions between member states in the months and years prior.

Throughout the negotiations, Northern states emphasised the pressure they are under due to secondary movements from states at the EU's external borders.<sup>9</sup> Illustrating this, in 2021, Eurodac recorded close to 190,000 applications for international protection from people who had already applied in another state.<sup>10</sup> But this is likely just the tip of the iceberg.<sup>11</sup> Because of this, Northern states have come to regard the prevention of secondary movements as a pre-condition for solidarity.<sup>12</sup>

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What factors shaped the vote? What will future negotiations focus on, and what will be the impact of the reforms on the ground? Finally, what should come after the New Pact?

The stakes have never been this high in EU asylum and migration policies. If the negotiations do not deliver reforms that can improve the European asylum system, it will not only undermine trust between member states. It will also undermine citizens' confidence in the EU and its capacity to manage the migration phenomenon like any other societal matter. If the reforms go ahead without substantial improvements, it will therefore be of the essence to identify implementation gaps and ways to address any remaining shortcomings. However, looking at policy areas that have long been overlooked will also be crucial.

For Southern states with the highest number of irregular entries – approximately 70,000 so far this year along the Mediterranean routes<sup>13</sup> – the priority has remained mandatory solidarity, preferably in the form of relocations.<sup>14</sup> In their absence, lack of registrations and secondary movements have become tools to relieve pressure on their asylum systems. However, this escamotage has increased political tensions in recent years.<sup>15</sup>

Another group of countries, including Hungary and Poland<sup>16</sup> – the latter currently hosting the highest number of temporary protection holders from Ukraine after Germany – has continued to firmly oppose mandatory relocations throughout the negotiations,<sup>17</sup> citing previously expressed concerns for national sovereignty on top of the limited resources available.<sup>18</sup>

Despite these fundamental differences, no state was or is in favour of preserving the *status quo*, except for Hungary and Poland, who stand against anything apart from shared efforts aimed at preventing spontaneous arrivals to the EU.<sup>19</sup> A comprehensive, predictable, and reliable EU asylum system is what most want. But creating a new, balanced, and straightforward system in these circumstances was never going to be easy. And this is where the texts negotiated and agreed upon fall short.

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In a nutshell, the reforms agreed by member states would not fundamentally alter the EU asylum system. The responsibility allocation rules would remain the same. For example, EU states rejected a provision expanding the definition of family members and allowing asylum seekers to reunite with siblings residing elsewhere in the EU, a Commission's proposal already agreed to by the Parliament.<sup>20</sup> Responsibility for asylum seekers would also be extended, reportedly to two years, and 'Dublin transfers' simplified.

Critically, the reforms would also create further obligations for states at the EU's external borders to systematically register irregular arrivals and use an expedited border procedure for a large share of asylum applicants. The goal is to speed up the return of asylum seekers whose application is rejected. Coupled with diminished safeguards, they would also make it possible to place children and other vulnerable individuals

arriving irregularly under detention. The exclusion of children from border procedures was one of the bones of contention in the negotiations before the final vote on 8 June, with several states only caving in the end. Among them was Germany, where internal divisions within the coalition government,<sup>21</sup> and pledges made by the Greens to reject any such measures made it an especially controversial item.<sup>22</sup>

At the same time, in what can be considered the most positive change, the new rules agreed by member states would create a system of mandatory solidarity, albeit *à la carte*. In normal circumstances, contributing states could choose between relocations, financial support, and operational support – which should focus on capacity building, infrastructure and technical equipment, among others – to offset the additional burden placed on states facing the highest number of irregular arrivals.

However, the total number of relocations per year would amount to 30,000, which appears especially low. To put this number into context, the EU saw nearly 900,000 first-time asylum applications in 2022.<sup>23</sup>

As for the alternative financial option, €20,000 was, in the end, the figure fixed for every asylum seeker not relocated.

Tellingly, during and after the 8 June public debates, some states called these solidarity contributions insufficient.<sup>24</sup> Poland and Hungary claimed instead that they would entail an unreasonable burden.

Against this background, it does not surprise that, just a few days after the vote, an EU delegation led by the Commission and involving the Italian government headed to Tunisia to strike a deal to prevent irregular departures from the North African country.<sup>25</sup> Turning to third countries to limit irregular entries in the EU is the inevitable consequence of a deal which does not provide sufficient reassurances to Southern states and whose implementation would also depend on countries like Poland and Hungary that have put that objective above all other considerations.

## 2. The Pact's future: Trialogues expected to advance at full speed

Trilogue negotiations with the Commission and the European Parliament will begin immediately to reach an agreement by Spring 2024.

Considering member states' compromises and divisions, the role of the Parliament has never been so important in addressing the reforms' limits and making the most out of their positive elements. Although several commentators expressed hopes for a decisive Parliament intervention,

the EU's House of Democracy has never been so divided, with the majority of the votes distributed among three groups.<sup>26</sup> Nevertheless, the centre-left S&D,<sup>27</sup> the centre-right EPP,<sup>28</sup> and the liberals from Renew<sup>29</sup> all want to get the New Pact done in time for the next year's European elections. The only group explicitly rejecting the Council's deal and the most security-oriented aspects of the Pact are the Greens,<sup>30</sup> but their votes are not needed for the reforms to go ahead.<sup>31</sup>

While further sticking points could emerge, four areas will likely feature in the triologue negotiations in this context:

- (i) The responsibility criteria and the notion of siblings.
- (ii) The exemption of children from border procedures.
- (iii) The notion of safe third country.
- (iv) Relocation obligations and measures to ensure that solidarity measures are sufficient overall.

As for the latter, the Parliament already established an 80-20 ratio between relocations and other measures, a position which is at odds with the more flexible approach taken by the Council.<sup>32</sup>

While commentators' attention and remarks on the Council's negotiated texts rightfully focused on the balance between solidarity and responsibility and the restrictions on fundamental rights, the reforms' complexity is also crucial to understand their possible future impact.

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Reflecting the need to accommodate irreconcilable demands by member states advanced before and during the negotiations, the compromise texts reinforce the complexity of the Commission's original proposals: many parts are phrased in technical jargon and marred with convoluted operational steps, leading commentators to label them as "byzantine".<sup>33</sup> This makes their actual impact hard to predict. During the vote, some member states admitted they were not sure about how the changes would work. Italy, for example, stated that they "still have doubts about the practical implementation of the relocation system."<sup>34</sup> Pressed on with the voting schedule, Hungary even remarked that they were "not even sure what they were voting on".<sup>35</sup>

### 3. After the New Pact: A period of ambitious change?

If the reforms go ahead, it will be essential to identify implementation gaps and solutions for shortcomings. But it will be just as important to look beyond the New Pact, reflecting the need for a more ambitious approach to migration policy, which is ultimately why the Council, the Parliament and the Commission want the reforms adopted.

The triologue negotiations are unlikely to make this problem better. If anything, the opposite might happen, as all EU institutions will try to defend their positions while under growing pressure to get the Pact done before the end of the current legislative cycle. The complex rules underpinning the 'new' system's operational mechanisms may thus herald a new period of ambiguities and recriminations, further reducing trust between member states.

Connected to this, qualified majority voting made it possible to unlock the deadlock. However, experience shows that its use in asylum and, more specifically, solidarity-related measures foretells limited compliance, if not outright defiance.<sup>36</sup> This is best illustrated by the refusal of Czechia, Hungary and Poland to uphold their relocation obligations after the rise in spontaneous arrivals in 2015-2016.<sup>37</sup>

If compliance with the rules will indeed remain low in the future, it will not only undermine trust between member states. It will also undermine citizens' confidence in the EU and its capacity to manage the migration phenomenon not as an unsurmountable challenge but like any other societal matter. Should the reforms be adopted, citizens will expect the new system to work better than the old one. But considering such a high degree of uncertainty, there is a risk that the reforms will not deliver the expected results, leading to further polarisation and social tensions.<sup>38</sup>

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While for the better part of the last two legislatures the EU's attention has focused on asylum reforms, many other files were neglected.

To begin with, after the Pact is agreed, member states must get down to business in solving internal borders issues. The Schengen area is in a deep political crisis,

and must be restored through upgraded rules and greater checks and balances, among others, to ensure adequate procedural safeguards for any reintroduction of internal border controls.<sup>39</sup>

Member states must also swiftly agree to common solutions for beneficiaries of temporary protection should Russia's war on Ukraine continue after 4 March 2025, when the current temporary protection regime will come to an end.

These two files have been put aside to make space for the political negotiations of the New Pact, but they cannot wait longer. The EU must also look beyond these dossiers, however. There are deep transformations taking place in the world and European societies.<sup>40</sup> To name but one, European populations are declining, leading to systemic labour shortages. Reforms currently being negotiated also cover legal migration,<sup>41</sup> but the polarising and divisive atmosphere of past years has made it so far impossible to design and follow a more ambitious agenda in legal migration matters.

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**Only time will tell whether the Pact will be the beginning of a new era paving the way for more profound changes or more of the same. But if the asylum reforms are adopted, the EU will no longer be able to use asylum policy and the bickering around it as an excuse for lack of action and ambition.**

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