

Has the New EU Pact on Migration and Asylum Stolen State Sovereignty?

By Chloe Hansen

In June 2024, the Pact on Asylum and Migration will come into effect, aiming to harmonize migration laws within the EU and strengthen solidarity among member states. However, it has sparked fierce criticism: opponents fear an infringement on national sovereignty and oppose the mandatory relocation of asylum seekers. This blog delves into the key objectives, controversies, and legal implications of the pact. Is this a necessary reform or a threat to national interests?

Introduction

"The European Union is a political bureaucratic organisation that has stripped away our identity and national sovereignty."
~ Geert Wilders, February 2017.¹

This statement by Dutch politician Geert Wilders echoes the voices of many other like-minded right wing politicians across the

European Union.² These critics argue that the EU's approach to migration policies, especially border control regulations, undermines national interests and state sovereignty. In the following blog, the new Pact on Asylum and Migration will be introduced, before its main criticisms are contrasted with its positive objectives. Finally, its legal content will be broken down and explained in the context of the Pact's criticisms.

In December 2023, the European Parliament and Council agreed upon a new Pact on Migration and Asylum, which was set to be adopted in June 2024 and to take full effect two years thereafter.³ The pact emerged after concerns of migration-related overcrowding were voiced in border states such as Greece and Italy. This, alongside criticisms of "voluntary" asylum quotas and unequal distribution of migrants within member states has led to the announcement of Phase 3 of the Common European Asylum System (CEAS), or the new Pact on Asylum and Migration. The Pact aims to harmonise migration law throughout member states

¹ CBN News. (2017). *Exclusive interview: Wilders could take Netherlands out of EU*. Available at: <https://cbn.com/news/world/exclusive-interview-wilders-could-take-netherlands-out-eu> [Accessed 27 Dec 2024].

³ European Union Agency for Asylum (EUAA). (2020). *21. Common European Asylum System and Current Issues*. Available at: <https://euaa.europa.eu/asylum-report-2020/21-common-european-asylum-system-and-current-issues> [Accessed 27 Dec. 2024].

while addressing border security and placing an emphasis on state solidarity.⁴ The central goal of the Pact is to reform Phase 2 of the CEAS into a more effective and practical mechanism through the implementation of ten new pieces of legislation.⁵ However, the pact is not without controversy. Some spokespeople believe that the nature of the new legislation infringes on an essential expression of state sovereignty.

Objectives and Criticisms

The primary objectives of the Pact are to foster shared responsibility and ensure mandatory cooperation between member states, with a strong focus on security and adherence to the guiding principles of the Geneva Convention.⁶ The Pact aims to achieve a more effective management of migration, thus improving solidarity and ensuring that states in distress are not left to manage migration pressures alone. Essentially, the Pact will improve coordination between member states in order to ease pressures caused by migration surges.

A key point of contention is that much of the new legislation will take the form of *regulations* rather than *directives*, a shift from the traditional approach within the CEAS. Directives are a form of EU secondary law which require transposition into national law and therefore allow discretion in application, whereas regulations have direct effect on member states. Regulations do however leave the manner in which they are enforced to be determined by member states.⁷ This means that states will have to adhere to European law in a way that is stricter than before.

Another particularly controversial element of the Pact is the emphasis on shared responsibility. This includes provisions for relocating asylum seekers from countries under pressure - such as Greece and Italy - through mandatory relocation or financial contributions from other member states. Critics argue that this infringes upon national sovereignty and that countries should have the right to manage their borders independently, without external imposition.⁸ NGOs have also questioned the impact that such an emphasis on border

⁴ Real Instituto Elcano. (2020). *The EU Pact on Migration and Asylum: Context, Challenges, and Limitations*. Available at: <https://www.realinstitutoelcano.org/en/analyses/the-eu-pact-on-migration-and-asylum-context-challenges-and-limitations/> [Accessed 1 Jan. 2025].

⁵ European Commission. (2023). *Legislative files in a nutshell: The Pact on Migration and Asylum*. Available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum/legislative-files-nutshell_en [Accessed 1 Jan. 2025].

⁶ European Commission. (2020). *Pact on Migration and Asylum*. Available at:

https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/migration-and-asylum/pact-migration-and-asylum_en [Accessed 30 Dec. 2024].

⁷ Besson, S. (2019). *The European Union and the Rule of Law: On the Political Economy of Integration and the Role of the Legal Order*. *The Yearbook of European Law*, 38(1). Available at: <https://academic.oup.com/yel/article/doi/10.1093/yel/yez004/5543611> [Accessed 30 Dec. 2024].

⁸ Real Instituto Elcano. (2020). *The EU Pact on Migration and Asylum: Context, Challenges, and Limitations*. Available at: <https://www.realinstitutoelcano.org/en/analyses/t>

security will have on human rights, particularly in countries with weaker asylum systems.⁹

Breakdown of the Pact

The Pact introduces several new regulations, which are as follows: The Asylum and Migration Management Regulation (AMMR) will replace the Dublin III Regulation and will introduce a mandatory, needs based solidarity mechanism aiming to ease unequal migration pressures across member states, including provisions for the relocation of migrants as well as significant financial contributions. Aiming to standardise the procedure for handling asylum applications is the Asylum Procedure Regulation (including the Return Border Procedure Regulation). Working alongside this provision is the improved Eurodac Regulation, reforming the Eurodac database to include not only asylum seekers but all migrants. This allows for effective management of irregular migrants in particular in movements across EU borders. Next, the Qualification Regulation provides a binding criteria for the status of refugees and individuals seeking international protection, while also outlining the rights and obligations of both the state and the asylum seeker. This will replace the existing Qualification Directive. Ensuring a

coordinated response during any and all migration crises is the Crisis and Force Majeure Regulation, allowing for temporary flexibility in certain procedures under exceptional circumstances. The Screening Regulation aims to improve the identification and registration of migrants, ensuring that those entering the EU are properly screened. Finally, the Pact will set a minimum standard for the reception of asylum seekers through use of the Receptions Conditions Directive.¹⁰

Clearly, this pact aims to be the framework behind a new, all inclusive and encompassing migration system throughout the entirety of Europe. Unfortunately, this goal, although some consider noble, is what attracts the most criticism.

Conclusion

Phase 3 of the CEAS, the new Pact on Asylum and Migration, is well founded. It addresses issues that have gone ignored for too long, and attempts to prioritise the well-being of all member states equally. This has of course attracted criticism from member states that perceive it as an infringement on their sovereignty. They believe that nations should retain sole control over their borders in order to implement policies tailored to their specific needs. Additionally, there is speculation of a gap in the pact regarding the

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⁹ PICUM. (2020). *Open letter: EU human rights risks in the Migration Pact*. Available at: <https://picum.org/blog/open-letter-eu-human-rights-risks-migration-pact/> [Accessed 1 Jan. 2025].

¹⁰ European Commission. (2020). *Pact on Migration and Asylum*. Available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/migration-and-asylum/pact-migration-and-asylum_en [Accessed 30 Dec. 2024].

protection of human rights. That being said, the Pact certainly represents a proactive step in the right direction by the European Union. At the end of the day, only time will tell what the Pact entails for individuals, member states and third parties. Whether or not it suits you, is up to you to decide.