



The Commission's 'new migration pact': Handle with care

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The European Commission's new migration plans are more likely to succeed than previous attempts at reforming the system. But they over-rely on the goodwill of both international partners and EU member-states.

After years of impasse, the European Commission unveiled its plans for overhauling the EU's migration and asylum system on September 23rd. The [New Pact on Migration and Asylum](#) is a complex mix of proposals for policies and legislation, with diverging levels of ambition. With a package that ranges from an attempt to solve disputes over [refugee quotas](#) to improving [legal pathways to Europe](#), the Commission wants to end years of migration policy mishaps. Migration was arguably one of the most toxic dossiers during Jean-Claude Juncker's 2014-19 mandate. His Commission tried, and failed, to get member-states behind a much needed reform of the Union's migration policy, after over a million people came irregularly to the EU in 2015. President Ursula von der Leyen is determined not to make the same mistake.

Von der Leyen's pact is just the beginning of a long process. National governments and the European Parliament need to work out which of the plan's elements they agree with, and, most importantly, which ones they will be able to sell to voters. These include suggestions for dealing with asylum seekers once they arrive at the EU's borders; plans to work with countries of origin and transit to stop people from coming in the first place; and arrangements for returning those who fail to obtain asylum.

One of the EU's biggest problems at the peak of the 2015-16 migration crisis was that frontline countries could not deal with the overwhelming number of asylum seekers arriving at their borders. Many of them moved on without filing an asylum claim, hoping to reach their final destinations in northern European countries like Germany and Sweden. Once the Balkan route shut and this was no longer possible, those left in Greece ended up in makeshift, crammed camps. Greece, Italy and, to a lesser extent, Malta's failure to process asylum seekers as they arrived was the result of both a dysfunctional European system and their own deficiencies. The EU's Dublin Regulation mostly requires the country that asylum seekers enter first to examine applications. And national authorities, particularly in Greece, were ill-equipped to handle massive flows of people.

Repeated attempts to fix the system over the past five years have failed because they mainly relied on EU countries being forced to take asylum seekers from the overwhelmed member-states. In April, the European Court of Justice [ruled](#) that Hungary, Poland and the Czech Republic had breached EU law by refusing to accept asylum seekers from Greece and Italy. And the Austrian government has repeatedly opposed mandatory quotas, as it argues that they encourage more people to enter the EU. Other EU countries are less loud but equally reluctant to revamp the system: successive Italian and Spanish governments have opposed reforms, as they benefit from current shortcomings (both countries have been relatively successful in curbing migration through bilateral deals with third countries, and prefer the status quo to more EU intervention. Some officials also suggest that the present arrangement allows Italy to turn a blind eye to people moving northwards when the figures become too high).

While the EU tried to reform its internal solidarity system it set up arrangements with Turkey, Libya and other countries of origin and transit that reduced flows. As a result, arrivals are now at their [lowest](#) in six years. But migration politics continue to be toxic. The Commission has come up with a solution that it believes will be palatable to all member-states. The plan for managing arrivals at the border is two-pronged: there will be separate asylum procedures, one for those with low chances of being accepted or who may be a security risk; and another one for vulnerable claimants (like children) or asylum seekers likely to be granted refugee status (because they come from a war-torn country, for example). The latter will follow the EU's usual asylum procedures, whereas the former will have their claims assessed at the border by national and EU border authorities.

Failed asylum seekers will be quickly returned if unsuccessful – and returns are the most important element of the Commission's proposal to break the standoff. Return rates are very low (in 2019, only [29 per cent](#) of those ordered to leave the EU did so) and differ widely from country to country. The new migration pact proposes a 'permanent solidarity mechanism' tailored to two different scenarios: normal and crisis times. The plan also covers search and rescue missions at sea, where member-states will have to commit to take in a share of those disembarked or offer help in-kind.

In normal times, national governments would be able to offer as much help to other governments as they wish. In a crisis situation like that of 2015, governments will have to choose between accepting asylum seekers from overwhelmed member-states, or helping them with returns through the so-called return sponsorship. EU countries can sponsor returns by, [for example](#), chartering flights, liaising with third country governments or giving money to those willing to leave voluntarily.

Return is arguably the most difficult part of any migration policy. Its success largely depends on collaboration with countries of origin and transit. The Commission wants to increase co-operation by placing migration management at the heart of the EU's relations with its partners, particularly in Africa. While the Commission says partnerships should be "[comprehensive, balanced and tailor-made](#)", its proposals emphasise increasing pressure on third countries so that they help with returns of migrants. It has already taken steps to make visa policy conditional on co-operation on returns, and wants to make use of leverage from "[all relevant EU policies and tools](#)" that are of interest to partners, like development aid and trade.

The Commission's proposal is broad and leaves room for negotiation. At first sight, it stands more chance of surviving than previous attempts, as the Commission has made sure to include something for everybody. The risk with broad church plans, of course, is that they may end up pleasing no one.

The new solidarity mechanism is a clever negotiating tactic: by giving countries the choice between taking asylum seekers in or helping to return failed applicants to their countries, the Commission hopes to call the bluff of the governments which have so far refused to accept people and have spent years saying migrants should be sent back home. But the idea could backfire.

First, those governments the EU wishes to expose may realise that specialising in returns every time there is a crisis serves their anti-migrant, illiberal narrative all too well. The political incentive for migration-sceptic governments will be to put money and effort into returns. This will make the system biased towards returns and against real burden-sharing, rewarding those with the most extreme views. Second, to effectively alleviate the pressure on over-burdened countries, return sponsorships need to work well and comply with human rights standards. It is unclear how member-states with little experience of returns, minimal diplomatic presence in countries of origin and transit, and a mixed record of respecting the rule of law can make that happen. Third, return sponsorships are the flip side of quotas – frontline and destination member-states will only agree to the idea of return sponsorship if all EU countries accept that they may eventually have to take asylum seekers in. This is because, in the case of large scale arrivals from a war-torn country, most people would qualify for asylum as opposed to return; but also because accepting that some countries would only return failed asylum seekers would be a tough political sell for countries like Germany, which has insisted on the need for a European solidarity system that emphasises integration. Yet, as the Juncker Commission learned, there is simply no chance of forcing mandatory relocation on sceptical member-states.

Making migration deals with countries of origin and transit will be tricky. Not all countries are the same. Providing funding schemes to create jobs in migrants' countries of origin is different to co-operating with failed states like Libya, which detains migrants in horrible conditions. Even the EU's comparatively reliable migration partners, like Turkey or Morocco, are becoming more assertive and less willing to help. But the main problem with the Commission's partnership idea is that many third countries will be unwilling to take more people back from the EU. The Commission's plans focus on the EU using its leverage to apply pressure to countries that refuse to co-operate on returns. But past experience suggests this might not be very effective. Co-operating on returns can be very unpopular for the EU's partners, as it can undermine governments' domestic legitimacy. Moreover, it often means losing out on remittances from citizens in the EU, which are usually much greater in magnitude than the funding provided by the EU.

This suggests that the EU is unlikely to secure much co-operation from its partners unless it gives them more tangible benefits. The EU's offers of visa liberalisation are conditional on agreeing to the readmission of third country nationals as well as a country's own citizens. The EU's partners fear being stuck with large numbers of foreign nationals that transited through their territory. Many member-states are also unlikely to agree to visa liberalisation with third countries, not least because overstaying visas is a common way for migrants to enter the EU. As to the Commission's plans to increase opportunities for legal migration to Europe, there is resistance from many member-states. At the same time, the EU only offers its neighbours a relatively [limited upgrading of trade ties](#) in exchange for extensive and politically costly alignment with the Union's *acquis*. European leaders have also [cut the EU's budget for external action](#) from the Commission's original proposals for the period 2021-27, giving themselves fewer resources to work with.

There are more challenges for the EU just around the corner: Europe's neighbourhood faces destabilisation as a result of the economic hit from the COVID-19 pandemic, which will probably lead to an increase in migration flows to the EU. The situation at the EU's borders will not improve unless the

member-states act. As long as there is no real burden-sharing, member-states on the EU's border will be incentivised to either let migrants go north or seal borders, keeping those migrants that make it through in very poor conditions. In the case of Greece, the situation is made worse by the lack of co-operation with Turkey since earlier this year. The EU can improve the situation by reaching a new agreement with Ankara, so that it continues to help Turkey care for the nearly four million refugees it is hosting, in exchange for resuming co-operation. At the same time, even if no EU-wide agreement on relocating refugees from Greek islands can be reached, a coalition of willing member-states should act unilaterally to improve conditions on the islands.

The new solidarity mechanism recognises that mandatory quotas are, and will remain, a tough political sell. But the concept of return sponsorship is politically dangerous and difficult to implement. In forthcoming negotiations, the European Parliament and some member-states are likely to insist on scrapping the mechanism altogether, in favour of a relocation mechanism; others may want to stick to returns. Neither are right. To be realistic, any reform should include a menu of options allowing EU countries to save face. But to be effective, it should also make clear that full burden-sharing on asylum and migration is an [obligation attached to Schengen membership](#). The EU should revisit a [2018 proposal](#) which also established a three-tier-system, but proposed mandatory quotas as a last resort and did not talk about return sponsorship, instead requiring EU countries to chip in with either money or resources like police officers or border guards.

If the EU's internal solidarity mechanisms remain in deadlock, the Union will have to continue to rely only on co-operation with third countries. But if the EU wants to secure greater co-operation, it should make its partners a more generous political and economic offer. The Commission's new migration pact is a well-considered plan that may manage to gather something of a consensus. But it relies on too many weak links. One faux pas and the whole system may collapse like a house of cards.

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