

152/2020

27 November 2020

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The Pact on Migration and Asylum,
a new opportunity for Europe?

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The Pact on Migration and Asylum, a new opportunity for Europe?

Abstract:

The European Commission has recently submitted the new European Pact on Migration and Asylum, a set of measures that seeks to address all elements of the migration issue from an integrated perspective and harmonize existing legislation in the EU.

The proposal, which comes after the failure of the successive measures adopted in recent years, has as its main contribution the abolition of the mandatory immigrant distribution quotas, which would be replaced by the mandatory solidarity mechanism. The adopted measures also aim to promote the return to the countries of origin of those asylum seekers whose applications have been rejected, the strengthening of some institutions such as Frontex and the establishment of alliances with third States to create legal migration routes, although there isn't any decisive moment in that direction.

Keywords:

Migrations, EU, mandatory solidarity mechanism, asylum, relocation, Dublin regulation, European law, Visegrad Group.

How to quote:

MANCHÓN, Felipe. *El Pacto sobre Migración y Asilo ¿una nueva oportunidad para Europa?* Opinion Paper. IEEE 152/2020.
http://www.ieee.es/Galerias/fichero/docs_opinion/2020/DIEEEO152_2020FELMAN_migraciones-ENG.pdf and/or [link bie](#)³ (accessed on the web day/month/year)

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El Pacto sobre Migración y Asilo, ¿una nueva oportunidad para Europa?

Resumen:

La Comisión Europea ha presentado recientemente el nuevo Pacto Europeo sobre Migración y Asilo, un conjunto de medidas con las que se persigue abordar desde un enfoque integrado todos los elementos de la cuestión migratoria y armonizar la legislación existente en la UE.

La propuesta, que llega tras el fracaso de las sucesivas medidas adoptadas durante los años recientes, tiene como principal aportación la supresión de las cuotas obligatorias de reparto de inmigrantes, que se sustituirían por el mecanismo de solidaridad obligatoria. Asimismo, las medidas tratan de potenciar el retorno a los países de origen de aquellos demandantes de asilo cuyas solicitudes hayan sido rechazadas, el reforzamiento de algunas instituciones como Frontex y la puesta en marcha de alianzas con terceros Estados para crear vías de migración legal, aunque no avancen decididamente en este sentido.

Palabras clave:

Migraciones, UE, mecanismo de solidaridad obligatoria, asilo, reubicación, Reglamento de Dublín, derecho comunitario, Grupo de Visegrado.

Introduction

The European Commission presented on September 23, 2020 the new Pact on Migration and Asylum¹, a long-awaited agreement that aims to address all elements of the migration issue from an integrated approach and harmonize existing legislation in the European Union (EU).

The proposal, which comes after the failure of the measures that have been adopted in recent years, has as a differential fact the abolition of the mandatory migrant distribution quotas, proposed in July 2015 to distribute the responsibility among the different EU countries², but that have never been fulfilled as Member States have not kept their initial commitments. According to this new Pact, the quotas would be replaced by the compulsory solidarity mechanism, which offers various formulas for the collaboration of these countries in the event of a crisis. The measures seek also to promote the return of those asylum seekers whose applications have been rejected to their countries of origin, since currently only a third of them return, as well as a reform of the asylum system to speed up deadlines and improve the registration of migrants.

The president of the European Commission, Ursula von der Leyen, took on, in the speech presenting her program before the European Parliament on July 16, 2019, the commitment to propose a new Pact on Migration and Asylum and to resume the reform of the Dublin regulation, blocked since 2016. «The European Union needs humanity on its borders. We must save, but rescue alone is not enough», she said then³. The implementation of the proposal accelerated after the fire on September 9, 2020 in the largest refugee camp on the continent, Moria, located on the Greek island of Lesbos.

¹ “Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020”. Available at https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en. Date of consultation: November 5th, 2020.

² Spain, Greece, Italy, and Malta.

³ “Opening Statement in the European Parliamentary Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission”. July 19th, 2019. Available at https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_4230. Date of consultation: October 27th, 2020.

When the plan was presented, Home Affairs Commissioner Ylva Johansson declared, very eloquently: «No one is going to be satisfied with these measures». However, as she herself recognized, the fact that the specific demands of any country have not been met can be essential to allow the agreement between States.

Beyond the European migration crisis

The significant increase in migration flows in 2015 and 2016⁴ changed Europe forever. In previous years, the number of arrivals had increased, but in 2015 the situation got out of control. The highest number of entries in history was then recorded: 1.8 million people⁵. The situation was caused by the instability existing in several areas, mainly in Syria: a country that had been involved in a civil war for four years and which accounted for a third of all arrivals to the continent in those two years. Sea was the preferred route, although there were also arrivals by land and airports.

The crisis revealed the lack of preparation of some asylum systems, both in human resources and in facilities⁶. A significant part of applications for international protection were slowly evaluated, which had a negative impact on the saturation of refugee centers. Furthermore, the differences between national asylum systems and the European norm that the country to which the migrant arrived was responsible for the resolution of his application, caused some people to prefer to move to Member States that had better conditions; in practice, this placed a greater burden on Mediterranean countries.

⁴ SIRVENT ZARAGOZA, Gonzalo. *La inmigración ilegal y el derecho de "protección internacional" en Europa*. Documento Marco IEEE 05/2019. Available at http://www.ieeee.es/Galerias/fichero/docs_marco/2019/DIEEEM05_2019GONSIR-inmigracion.pdf. Date of consultation: November 7th, 2020.

⁵ "La UE recibió más de 1,8 millones de migrantes irregulares en 2015". *El País*, February 2nd, 2016. Available at https://elpais.com/internacional/2016/02/01/actualidad/1454358866_828887.html. Date of consultation: November 9th, 2020.

⁶ UNHCR. "2015: el año de la crisis de refugiados en Europa". Available at <https://www.acnur.org/es-es/noticias/notas-de-prensa/2353-2015-12-30-16-24-16/>. Date of consultation: November 5th, 2020.

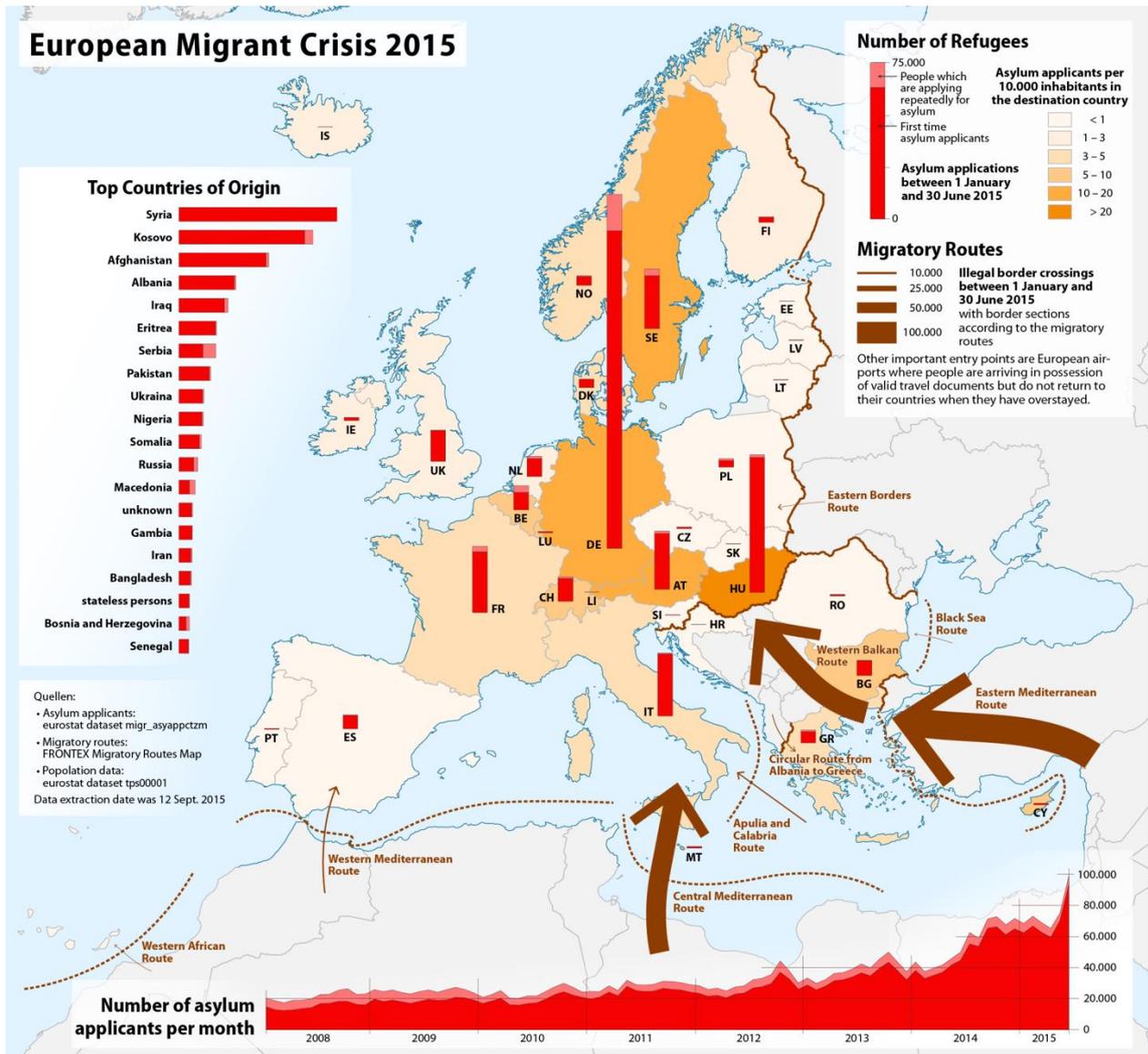


Figure 1: statistical data of the European migration crisis of 2015. Source: Eurostat

As a solution, in May 2015, the European Commission proposed a temporary quota system to relocate asylum seekers present in the European Union⁷ among all Member States, and within a maximum period of two years. The distribution would take place according to the size of the countries, and France (2 375 migrants), the United Kingdom (2 200) and Austria (1 900) would be the three that would receive the most, although

⁷ MANCHÓN, Felipe. *El reasentamiento y la reubicación de refugiados y su aplicación en la actual crisis humanitaria*. Opinion Paper: IEEE 20/2017. Available at http://www.ieeee.es/Galerias/fichero/docs_opinion/2017/DIEEE020-2017_Refugiados_ManchonCampillo.pdf. Date of consultation: November 5th, 2020.

four States: Iceland, Liechtenstein, Norway and Switzerland showed their willingness to receive more people than had been assigned initially.

The proposal ran into two main problems. Firstly, the four countries that form the so-called Visegrad Group, the Czech Republic, Slovakia, Hungary, and Poland, were opposed to receiving migrants⁸. Hungary, the most belligerent of all, held a referendum in October 2016⁹ in which 98.36% of the participants voted against the European plan, although the consultation did not enter into force as the required participation was not reached. The second drawback was that the rate of relocation of migrants in Europe was slow and in September 2016, only 3.5% of the objectives set had been met¹⁰.

Despite this, the European Commission made two proposals in 2016 to try to improve the situation. The first was an agreement with Turkey, that was signed in March that year. The deal considered this country safe for the reception of migrants, and therefore it would take charge of all the people who entered the continent illegally through the Greek border in exchange for counterparts such as visa exemption and the resumption of negotiations for Turkey's entry into the European Union. The agreement was met with controversy by some organizations, mainly non-governmental organizations that claimed that it violated human rights but was finally approved.

Furthermore, a reform of the Dublin III Regulation was proposed to definitively introduce quotas and their obligatory nature into the Community legal order. This Regulation, approved in 1990 and amended several times, is the regime that determines which country is responsible for each asylum application¹¹. However, the opposition of the

⁸ The group gets its name from the non-aggression pact signed between the kings of Hungary, Poland, and Bohemia in the Hungarian city of Visegrad in 1335. Its current composition was configured in 1991, when the Heads of State and Government of Czechoslovakia, Poland and Hungary met in the same city to accelerate the process of European integration.

⁹ "Hungary PM claims EU migrant quota referendum victory". *BBC*, October 3rd, 2016. Available at <https://www.bbc.com/news/world-europe-37528325>. Date of consultation: November 5th, 2020.

¹⁰ "La UE solo ha reubicado al 3% de los refugiados prometidos hace un año". *El Periódico*, September 22nd, 2016. Available at <http://www.elperiodico.com/es/noticias/internacional/solo-reubicado-los-refugiados-prometidos-hace-ano-5400566>. Date of consultation: November 6th, 2020.

¹¹ IMAZ CHACÓN, Cristina. *La política migratoria: entre la seguridad y la humanidad*. Documento de Opinión IEEE 90/20. Available at http://www.ieeee.es/Galerias/fichero/docs_opinion/2020/DIEEEEO90_2020CRIIMA_migraciones.pdf. Date of consultation: November 6th, 2020.

Member States made political agreement between the European partners impossible, and the reform known as Dublin IV, the last measure of this type proposed so far, failed.

Since then, the situation has started to change. The combination of the measures taken by the European Union and the reduction of the factors that forced people to leave their countries caused the arrivals of migrants to Europe to fall progressively, reaching a total of 142,000 in 2019 and 15,000 until March 2020, the latest official figure published. In 2019, according to CEAR data¹², there was a 13% decrease in the irregular entries of migrants, both by land and by sea, compared to 2018, although the Atlantic route to the Canary Islands from Africa was reopened due to the closure of other routes.

In Spain, air has become the main access. It was used by 77% of the total number of asylum seekers who arrived in 2019 from countries such as Venezuela (40 906 migrants), Colombia (29 363) and Honduras (6 792). In addition, the sea route begins to decline, with a 54.5% decrease in 2019 compared to the figure for the previous year.

However, 17 388 people have arrived in the Canary Islands in 2020 in illegal boats¹³. The situation in the Canary archipelago, which accounts for 65% of all irregular migrants who arrived in Spain this year, has recently worsened, reaching peaks never seen before¹⁴, and after the Constitutional Court endorsed the so-called *hot returns*.

To face this, the Government has drawn up an emergency plan and has decided, together with the European Border and Coast Guard Agency (Frontex), to relaunch a joint operation in the area, which aims to stop the departure of the *cayucos* and return its occupants to their home state¹⁵. The project is still in a preliminary phase, with many

¹² CEAR. *Informe 2020: las personas refugiadas en España y Europa*. Available at https://www.cear.es/wp-content/uploads/2020/06/Informe-Anual_CEAR_2020_.pdf. Date of consultation: November 6th, 2020.

¹³ “Canarias iguala en el último mes el número de inmigrantes llegados en el resto del año”. *El Confidencial*, November 15th, 2020. Available at https://www.elconfidencial.com/espana/2020-11-15/inmigrantes-desembarcan-canarias-arguinequin_2832915/. Date of consultation: November 16th, 2020.

¹⁴ “Llegan a Canarias unos 2.000 inmigrantes, la cifra más alta desde la ‘crisis de los cayucos’”. *El Confidencial*, November 8th, 2020. Available at https://www.elconfidencial.com/espana/2020-11-08/canarias-migrantes-llegada-pateras-protestas_2824156/. Date of consultation: November 20th, 2020.

¹⁵ “Repatriación y más vigilancia, el papel del Estado ante la inmigración”. *El Día*, November 14th, 2020. Available at <https://www.eldia.es/canarias/2020/11/14/repatriaciones-vigilancia-plan-inmigracion-23147334.html>. Date of consultation: November 16th, 2020.

elements to be defined, such as the means to be used, the regions where it will be produced and the level of involvement of countries such as Senegal and Mauritania.

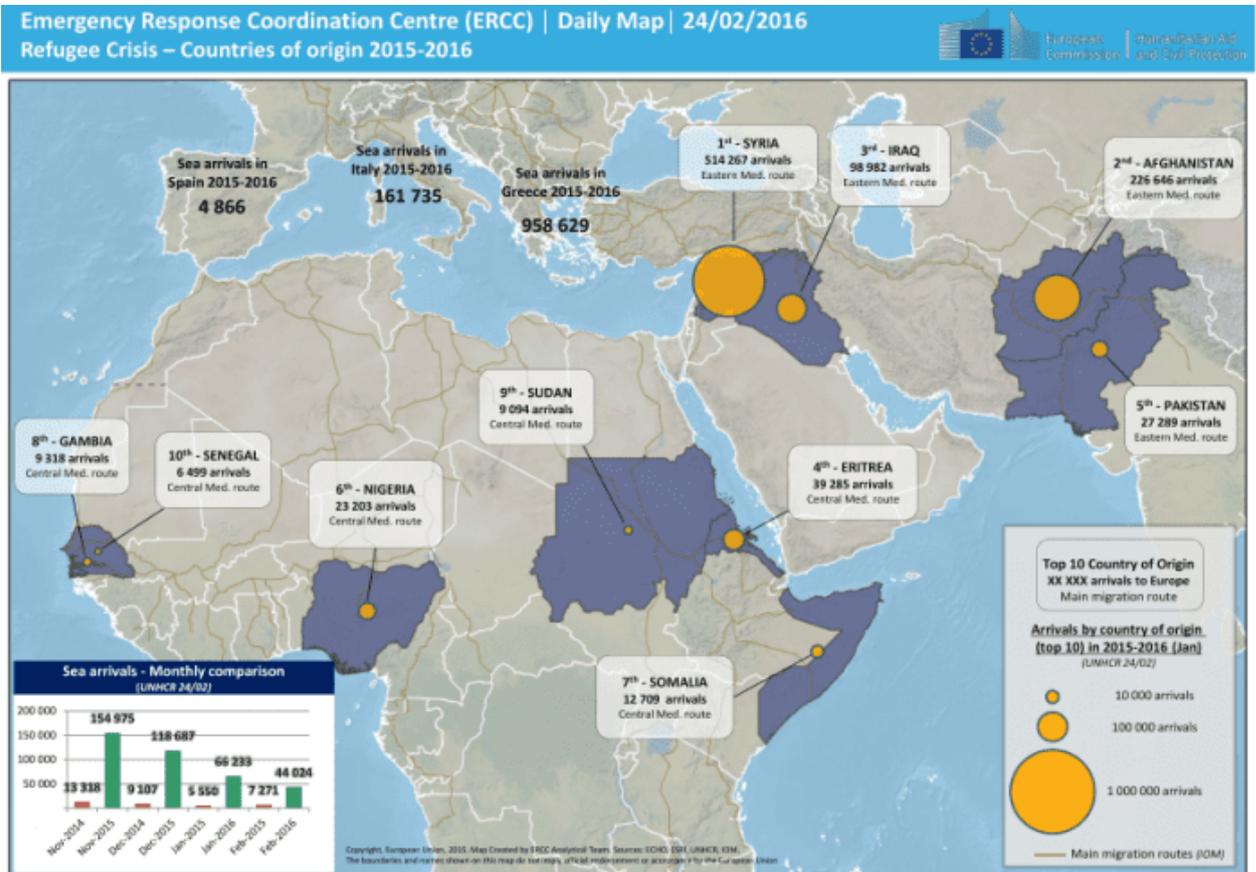


Figure 2: home countries of migrants 2015-2016.

Source: Emergency Response Coordination Centre ERCC

Beyond this, migrations are not being immune to COVID-19. According to a document from the UN General Secretariat¹⁶, the pandemic represents a threat for migrants in three ways: health, because people on the move are exposed to the virus without having tools to protect themselves, and they can bring with them non-existent or eradicated diseases in Europe; socioeconomic, because they also have limited or no access to social protection measures; and protection, because the closing of borders causes these people to be trapped in very dangerous situations.

¹⁶ United Nations. *COVID-19 and People on the Move*. Available at https://www.un.org/sites/un2.un.org/files/sq_policy_brief_on_people_on_the_move.pdf. Date of consultation: November 6th, 2020.

Despite the drop in migratory pressure, the situation remains very complicated. The fire in the Moria camp¹⁷ highlighted many of the current problems, such as the overcrowding of the camps or the poor living conditions in them. Moria, for example, had a maximum capacity of 2 500 people, but at the time the fire broke out, there were about 13 000 of them. The new Pact on Migration and Asylum, together with the promises of the Commission not to allow more camps such as Moria, will try to provide a permanent solution to migratory flows, involving the Member States.

Analysis of the main pillars of the new Pact

The Pact on Migration and Asylum proposed by the European Commission is based on four pillars¹⁸ with which it aims to provide an answer to all migration problems. Although, as already noted, the main novelty is the elimination of mandatory quotas, there are other measures that would be a part of European law, if the countries reach an agreement, like the strengthening of some institutions such as Frontex and the implementation of partnerships with third States in order to create legal migration routes.

Mandatory solidarity mechanism

To improve the current stagnation, an integrated approach to migration will be attempted. To this end, the relocation project proposed in May 2015 is eliminated and the mandatory solidarity mechanism is introduced so that all countries participate in reducing migratory pressure. This new system aims to prevent some countries reluctant to receive people from failing to fulfill their commitments, and it comes after the ruling of

¹⁷ “Un gran incendio destruye Moria, el mayor campo de refugiados de Europa”. *La Vanguardia*, September 9th, 2020. Available at

<https://www.lavanguardia.com/internacional/20200909/483384241896/incendios-evacuar-refugiados-campamento-grecia-moria.html>, Date of consultation: November 6th, 2020.

¹⁸ PEERS, Steve. *First analysis of the EU's new asylum proposals*. Available at

<http://eulawanalysis.blogspot.com/2020/09/first-analysis-of-eus-new-asylum.html>. Date of consultation: November 6th, 2020.

the European Court of Justice of April 2, 2020¹⁹, which agreed with the Commission and ruled that all Member States should contribute to the care of migrants.

The new mechanism, which replaces quotas, would be activated only in the event of a crisis similar to the one of 2015 and 2016, and offers States that do not want to receive migrants two alternatives: participate in returns or get involved with operational, logistical, or financial support, for example, the construction of a refugee camp. The new return policy is also part of this pillar, since currently less than 30% of rejected migrants return to their countries.

The proposal also provides that if a migrant has not been relocated or returned eight months after his request was denied, he must be granted asylum in the country, although it is not clear how this will work. To manage all this, a new position has been created, that of the European Return Coordinator, whose responsibility will be to deal exclusively with it.

More comprehensive security procedures

This Pact also provides for the implementation of more efficient and faster procedures with new controls and exhaustive tests, both health and security, to determine personal identities and detect, if that is the case, radicalized elements or those belonging to terrorist groups. For this purpose, the reform of the European Dactyloscopy Agency (Eurodac) is very important. This body, operating since 2003, only collected until now the footprints of migrants upon arrival. However, with the new package of measures, it will increase its powers so that it can be quickly determined whether they are asylum seekers or economic migrants.

The proposal also includes the reform of Frontex's legal framework. The agency will have a permanent body of more than 1 000 staff, foreseeably on January 1, 2021, with the aim of not depending on other organizations and of distributing the responsibility for the surveillance of community borders, since Frontex is of European scope, not exclusively national. This part of the proposal also promotes a common governance of

¹⁹ Court of Justice of the European Union. *Judgment in Joined Cases C-715/17, C-718/17 and C-719/17 Commission v Poland, Hungary and the Czech Republic*. Available at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-04/cp200040en.pdf>. Date of consultation: November 6th, 2020.

migration so that national and community policies are as aligned as possible. To this end, the Commission plans to create a new European Union Asylum Agency as the reference body in this matter that will replace the current European Asylum Support Office (EASO).

New criteria for the distribution of migrants

As a third pillar, the new Community legislative package breaks with the rule that the first country of arrival is responsible for asylum applications. This criterion, in force since the approval of the Dublin Convention in 1990 and reiterated by Regulation (EU) No. 604/2013²⁰, caused certain Member States with more benevolent migration legislation to suffer an excessive burden of asylum seekers. As of the approval of the plan, priority will be given to other elements for assigning migrants to a specific country, such as the hypothetical family ties they may have or their educational background.

The procedures for resolving asylum applications, which have been very slow in recent decades, will be faster and more efficient at the borders. According to the European Commission proposal, both the resolution of asylum applications and returns must be completed in a maximum of 12 weeks, for which Member States will be given means.

Increased cooperation with third countries

The last point provides for greater aid on the ground. The European Commission will mobilize a total of € 70 billion for cooperation with developing countries, especially with those from which the most migrants come. Furthermore, the signing of *ad hoc* bilateral agreements with third States is planned, which would include important measures, such as the establishment of new channels of legal immigration and the launching of associations to identify the talents that they could contribute to the European Union.

²⁰ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0604>. Date of consultation: November 6th, 2020.

Some of the measures provided for in the plan have already been proposed by the European Commission, such as the Regulation on the Management of Asylum and Migration or the modification of the legal framework of Eurodac. In 2021 the European Return Coordinator will be appointed, and much of the planned legislation will enter into force, such as the New Strategy for Voluntary Return and Reintegration or the Strategy on the Future of Schengen. The Pact will enter into force in 2023, although an agreement between the Member States will be necessary, which is still a long way off.

Divided views

The president of the European Commission, Ursula von der Leyen, recognized in the speech in which she explained the main lines of her political program that the old immigration system no longer worked, and that a thorough reform was necessary. Following the presentation of the Pact, she stated: «The project represents a fair and reasonable balance between responsibility and solidarity» and noted that the fire in the Moria camp had accelerated the presentation of the proposal²¹.

Also in the Commission, Vice President Margaritis Schinas defended the new measures and the relevance of reforming European legislation on the matter. «Pretending that with the laws of Dublin we are going to manage the situation today does not make any sense²². It means transmitting everyone's responsibility to the countries on the external border. That cannot be. It is not acceptable that Spain, Greece, Malta, or Italy assume this responsibility on behalf of others», he said. Schinas also recalled that no Member State experiences migration in the same way and that therefore the challenges deserve to be particularly recognized and addressed.

Most of the European Union countries have approved the measure presented by the Commission, but not all agree with it. The two Member States that have promoted the project together with the European Government: Germany and France, have supported it, although they have stated that it needs to be improved. German Interior Minister

²¹ «Opening Statement in the European Parliamentary Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission», *op.cit.*

²² GARCÉS-MASCAREÑAS, Blanca. *Por qué Dublín "no funciona"*. CIDOB, November 2015. Available at https://www.cidob.org/es/publicaciones/serie_de_publicacion/notes_internacionales/n1_135_por_que_dubl_in_no_funciona/por_que_dublin_no_funciona. Date of consultation: November 6th, 2020.

Horst Seehofer stated that the Pact is a good basis to start negotiating²³ but called for an agreement from all countries to ensure the effectiveness of the measures.

His French counterpart, Gérald Darmanin, has spoken in the same terms: «We all want European solidarity. There is no reason why Italy, France, and Germany, along with Greece, are the only ones to share responsibility». Darmanin also warned against the lack of a joint response from the Member States, which would make it impossible for some of the measures proposed in this Pact to come into force, such as speeding up returns²⁴.

Meanwhile, the European countries of the southern border have opposed some central elements of the Plan. In a letter sent on November 25, 2020 to the European Commission²⁵, the governments of Spain, Italy, Greece, and Malta claimed that the project does not guarantee solidarity and called for an equitable distribution of the migratory burden. For them, the proposal is a good starting point, but there are some flaws that they think should be addressed.

The main one refers to the system of reception of migrants: the southern states are committed to maintaining the current relocation quotas, to the detriment of the solidarity mechanism proposed in this Pact, which, according to them, is complex and vague. They have also asked the Commission that the proposal addresses legal migration, as they understand that it could be essential to stop irregular flows. If these changes are not made, the authorities of these countries pointed out, consequences such as the creation of large migrant detention centers at border points could be generated, as it is the case of Lesbos and the Canary Islands.

In the opposite block, the countries of the Visegrad Group are satisfied with the fact that the package of measures proposed by the European Union has made the relocation of

²³ “Germany optimistic EU will soon agree on new migration pact”. *Infomigrants*, October 9th, 2020. Available at <https://www.infomigrants.net/en/post/27845/germany-optimistic-eu-will-soon-agree-on-new-migration-pact>. Date of consultation: November 6th, 2020.

²⁴ “Gérald Darmanin: ‘La question migratoire ne se règle qu’au niveau européen’”. *Linfo.re*, September 23rd, 2020. Available at <https://www.linfo.re/france/politique/gerald-darmanin-la-question-migratoire-ne-se-regle-qu-au-niveau-europeen>. Date of consultation: November 9th, 2020.

²⁵ “España, Italia, Grecia y Malta piden a la UE más solidaridad y que se repartan los migrantes entre los países miembros”. RTVE, November 25th, 2020. Available at <https://www.rtve.es/noticias/20201125/espana-italia-grecia-malta-piden-ue-mas-solidaridad-nuevo-plan-migracion-asilo/2058489.shtml>. Date of consultation: November 25th, 2020.

refugees voluntary and that it offers alternatives to quotas. Before the presentation of the plan, they were very skeptical about the content of the European Commission's proposals. However, some of the approved provisions, especially those related to improving the protection of the external border and returns, have been very popular in these countries, which are now open to reaching an agreement.

But some of them ask for more. This is the case of Hungary, which has been very critical of quotas and has demanded the total closure of European borders. The Czech Republic, for its part, has reacted by asking for clarification about the role of each country in the new system. «It is fair that everyone participates in the system. But we must analyze the proposed mechanisms and their impact on the Czech Republic in the next negotiations», declared the Minister of Foreign Affairs, Milena Hrdinkova.

The positions of the countries regarding the agreement could be altered by the latest terrorist attacks in Europe, especially the one that happened in the French city of Nice on October 29, 2020, whose author, the Tunisian Brahim Aouissaoui, had entered the continent through Lampedusa, one of the ports that migration use the most. This caused an important controversy in Italy, where the leader of Lega Nord, Matteo Salvini, requested the resignation of the Minister of Interior when the news was announced²⁶. Some parties have established in recent years a relationship between migration and terrorism, and have insisted on this association after the attacks in various parts of Europe that occurred in the last decade, and this could be reproduced in this case.

As for the NGOs, they have mostly criticized the agreement, as they consider that it offers old solutions, and they fear that tougher reforms will be initiated from it and that it will lead to a greater restriction of entry through the borders. Eve Geddie, EU Advocacy Director at Amnesty International, said: «Although it is presented as a new beginning, this pact is actually designed to raise the walls and reinforce the fences»²⁷. Some organizations, such as Oxfam Intermón, although having applauded the intention of the European Commission, have regretted that it has given in to pressure from some countries and that mandatory quotas have been eliminated.

²⁶ «Polémica en Italia por el paso por Lampedusa del terrorista de Niza». *La Vanguardia*, October 30th, 2020. Available at <https://www.lavanguardia.com/internacional/20201030/4977020921/polemica-italia-terrorista-niza-lampedusa.html>. Date of consultation: November 6th, 2020.

²⁷ Amnesty International. *EU: Migration Pact is not a fresh start but a false start*. Available at <https://www.amnesty.org/en/latest/news/2020/09/eu/>. Date of consultation: November 9th, 2020.

For them, the project could involve an expansion of refugee camps, despite the explicit commitment of the European Commission to eliminate them, especially after the Moria fire, and moving towards a scenario in which there are more people arrested for a longer period of time. In addition, they consider that the acceleration of the deadlines, mainly in relation to returns, could result in a poor evaluation of asylum applications, because it would not give time to analyze them in depth or to make an individualized study of each one.

As an alternative, NGOs consider that it would be better to apply current legislation in a comprehensive manner and increase safe and legal channels of entry, and that this package of measures does not offer such possibilities, and on the contrary reduces asylum and human rights safeguards and jeopardizes the principle of non-refoulement. «This pact is like asking a bully from school to take a child home», said Judith Sutherland, deputy director of the Europe and Central Asia division of Human Rights Watch²⁸.

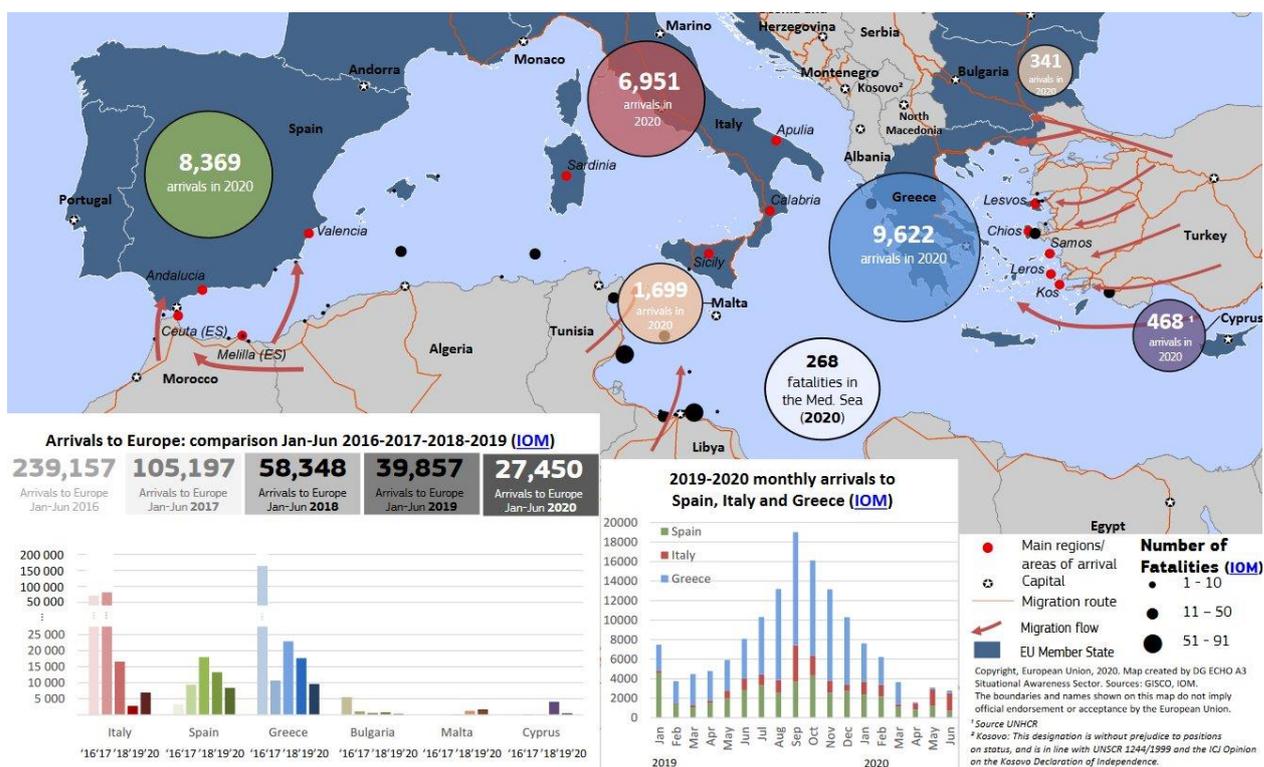


Figure 3: migrant arrivals to Europe 2016-2019.
 Source: International Organization for Migration IOM

²⁸ Human Rights Watch. *The Pact on Migration and Asylum*. Available at <https://www.hrw.org/news/2020/10/08/pact-migration-and-asylum>. Date of consultation: November 6th, 2020.

Conclusions

Negotiations between member countries to reach an agreement will be tough, and it is not yet known when they will be completed. The most optimistic forecasts suggest that the plan could be approved in December 2020, but this has become unlikely. However, the positions are still very far apart, because despite agreeing on most of the measures of the European package, the different parties involved have distant points of view, especially regarding the reception and care of migrants.

For this reason, it cannot be ruled out that the European Commission amends the current proposal and eliminates some of the aspects to obtain its approval, as it requires the unanimity of the 27 member states to move forward. Until this quorum is reached, the previous legislation will remain in force, mainly the Dublin III Regulation, and also the mandatory relocation quotas in Europe.

In addition, the Commission has already yielded to pressure from countries critical of receiving migrants. And it has also envisaged new formulas that, although they have been censored by NGOs, no Member State has opposed for the moment. With this proposal, the team led by Ursula von der Leyen has changed the policy of its predecessor, Jean-Claude Juncker, who opted for a vision focused on the distribution of migrants between the Member States. The new Pact on Migration and Asylum therefore represents a definitive renunciation of the Dublin Regulation reform proposed in 2016.

As for the southern European border countries: Spain, Italy or Greece, they were the main beneficiaries of the proposals made in the crisis, and now they have seen how their demands have not been heard, which is probably why they did not attend the announcement of the new proposal. For this reason, they expressed their opposition to some of the measures and demanded that some type of compulsory relocation mechanism must be introduced in order to better distribute the migratory burden. On the contrary, those of the Visegrad Group, which were the most critical of quotas during the 2015 and 2016 crisis, have achieved their objectives. Thanks to the mandatory solidarity mechanism, which allows a commitment on demand, they will be able to refuse to receive migrants without violating community laws. In this regard, the main question is whether the frequent use of return promotion and operational support could have any consequences for these countries.

Another of the fundamental elements provided for in the Pact is the signing of agreements with third countries, which reinforces one of the most common practices of recent decades, especially with those from where the people trying to reach Europe come. However, it is not clear from the content of the proposal whether these will be useful to regulate migration and create legal avenues of entry. It will be very important to know whether they will be effective to solve the problem in the long term, or if they will be of another type, such as the outsourcing agreements signed to manage the situation in a particular country.

There is also an extremely important question: the Pact's ability to offer permanent solutions to the migration problem. With this proposal, the European Union has prioritized returns and the shielding of its borders against the establishment of new possibilities of legal entry. The latter could have as a result the closure of some of the most dangerous migratory routes and a brake on human trafficking networks, in addition to a positive demographic impact on European countries, given the aging of the population and the reduction in the number of births, although it seems unlikely that they will be included in these proposals. Its absence is also one of the reasons for the frontal rejection of the NGOs to the European plan.

The new Pact on Migration and Asylum wants to become the definitive model of migration management in Europe. The success of the negotiations for its approval and application would allow undertaking other pending reforms in the middle term. Among others, that of the Common Asylum System (SECA), which has been tried on several occasions without success. However, if it fails, due to lack of agreement or defects in its implementation, it could plunge the European Union into legal and political limbo, in which case the nations of the south would be forced to face the waves of immigrants on their own account. And also, to worsen a situation that, despite everything, is much more controlled than five years ago. The European Commission has done its job, now the success or failure of this new Pact depends on the commitment and responsibility of the Member States.

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