

POLICY BRIEFING

Brussels, 20 June 2023

THE NEW EUROPEAN UNION PACT ON MIGRATION: RACIALIZING MIGRATION TO AND IN EUROPE

On June 8, 2023, the Council of the European Union under the auspices of the Swedish Presidency agreed on a new Pact on Migration and Asylum[1] which has been hailed by the Commissioner for Home Affairs, Ylva Johansson as “a great, great achievement, showing that it's possible to work together on migration”, and by Germany's Federal Minister of the Interior, Nancy Faeser as “historic”. While this is not a done deal, this will form the basis of negotiations by the Council Presidency with MEPs in Parliament, and it is expected that the Parliament will concede, making this law.

EU member states try to argue that this new pact is not meant to keep racialized communities out of Europe, but to stop ‘irregular migration.’ The reality, however, is that borders are mirrors that reflect and represent exclusionary attitudes and racialized anxieties.[2] In essence, they are technologies of race-making that reflect the anti-immigrant discourse and attitudes in Europe often targeting groups and migrants defined in and through racial lenses. Besides, this new plan contrasts the dignified and unified response from EU member states to the displacement of Ukrainian refugees. The double standard in this new agreement is glaringly apparent and actively continues the discriminatory approach to granting protection which underscored the differential actions taken by EU member states towards Ukrainian and non-Ukrainian refugees seeking safety from the violence in Ukraine. EU member states may tell themselves otherwise, but this pact is designed to keep a particular group of refugees and migrants out of Europe, often those coming from Africa, Asia, the Middle East and Latin and South America.

The Main Points:

The Council has agreed on a negotiating position on the asylum procedure regulation and on the asylum and migration management regulation, two key pieces of legislation consisting of a set of proposals to reform EU migration and asylum rules.[3]

Essentially, EU member states have agreed on a deal that is based on trying to limit accessibility to international protection for migrants in Europe. Not only is this agreement incompatible with the internationally recognized right to asylum as enshrined in the 1951 Convention,[4] it also betrays the spirit of the Common European Asylum System which recognizes asylum as a fundamental right and an obligation for countries and calls for the dignified and fair treatment of people fleeing prosecution.[5] What is more, articles 18 and 19 of the EU Charter of Human Rights guarantee the right to asylum and prohibit group or individual expulsions and extraditions to places where they are at risk of torture, degrading or inhumane treatment.[6] This deal makes no attempt to safeguard these core principles of international and European refugee law which are meant to guarantee standards of protection for refugees and people on the move.[7]

Through the expansion of the border procedures, accelerated procedures and inadmissibility procedures, EU member states effectively ensure that persons fleeing persecution are denied access to asylum in Europe, and more people are going to be detained in unsafe, overcrowded, and inadequate conditions at Europe's external borders. That is, under the guise of evaluating the admissibility of applications, a mandatory border procedure has been introduced with the aim of preventing asylum seekers from accessing the regular asylum procedure.[8]

Further, this pact erodes the principle of non-refoulement which is a core principle of the international and European protection system by encouraging the use of the 'safe third country' concept. By failing to agree on common EU rules for determining 'safe third countries' and leaving this up to the member states to make their own assessment, this agreement opens the door for abuse and the erosion of the prohibition of refoulement. While a certain threshold for protection needs to exist and there needs to be a connection between the returnee and the 'safe third country', this determination is left up to the member state. According to draft texts, a person simply needs to have "settled", "have family" or "stayed" in a country to be considered as having a connection. Member states are likely to return asylum seekers to countries through which they transited or to other 'safe third countries' with worrying human rights records like Tunisia. It also ensures that responsibility is transferred to countries outside Europe even though about 83% of global refugees are hosted in middle- and low-income countries while Europe's share of refugees compared to its population is only 1.5%.[9]

Member States have decided that solidarity is up for sale and flexible by settling for 'mandatory solidarity'.^[10] Under this agreement, member states can provide financial contributions to a shared EU fund as an alternative to accepting the relocation of asylum seekers within their own territories. How the money in this fund will be used is still up for debate. In all likelihood, this money will be given to countries like Tunisia, Egypt, Morocco, Algeria, Turkey or the countries of the Western Balkans in exchange for their help in 'managing' migration to Europe. The President of the Commission, Ursula von der Leyen, Italian Prime Minister, Giorgia Meloni, and Dutch Prime Minister, Mark Rutte, recently visited one of these countries, Tunisia (despite reports of human rights abuses against sub-Saharan African migrants),^[11] where they promised to offer a €100 million this year for 'border management', speak for using whatever means necessary to stop asylum seekers and migrants from reaching Europe.^[12]

Under this new plan, people from countries with recognition rates below 20% as classified by the EU's asylum agency will be filtered through a fast-track procedure at the border.^[13] An approach which is problematic as it ignores the requirement under international and European law for each individual asylum application to be assessed based on its merits and not on group characteristics. This fast-track procedure is also extended to persons considered as threats to national security or public order, and to those considered to have withheld information or misled authorities. This provision risks leading to reinforcement of bias and discrimination, contribute to the criminalization and intimidation of certain groups of people by immigration and counter terrorism agencies, and in general will lead to arbitrariness in its application. The ECHR has acknowledged in the past that "owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof."^[14] Rather than giving the benefit of the doubt, this deal risks worsening the vulnerability of asylum seekers and migrants by exposing them to high risks of detention and repatriation.

Generally, the procedural rules remain unclear and as such vulnerable to abuse by member states. For instance, it is unclear what the individual threshold for solidarity obligation offsets will be or what constitutes a 'migratory pressure' or how this new plan differs from the malfunctioning Dublin regulation.^[15]

Racializing Migration to and in Europe

1 | Confirming Europe's double standards

This new plan contrasts the dignified and unified response from EU member states to the displacement of Ukrainian refugees which showed a spirit of solidarity with persons fleeing war and persecution. The immediate activation of the Temporary Protection Directive demonstrated the merits of swift access to protection status, streamlined procedures, fairer redistribution of refugees across Europe, family reunions, freedom of movement, and easy access to the job market. A response showing it is possible to welcome and to treat asylum seekers and migrants in a dignified and humane manner. Europe's open arms policy toward Ukrainian refugees painfully contrasts with this new pact between member states which in essence sets out to reduce protection standards in Europe for racialized people on the move. According to the Commission's own data, in 2022, first-time asylum applicants mainly came from Asia (30%), Africa (21%) and the Middle East (20%).^[16] Going by this, most of those who will be affected by this new pact on migration are people coming from Asia, Africa and the Middle East. In contrast to the favorable response towards displacement from Ukraine, the inherent double standard in this new agreement becomes glaringly apparent and actively continues the discriminatory approach to granting protection which underscored the differential actions taken by EU member states towards Ukrainian and non-Ukrainian refugees seeking safety from the violence in Ukraine.

2 | Increased use of racialised border procedures

The increased use of border procedures in all likelihood will increase pushbacks and detention, with the disproportionate impact being on racialised communities. Borders are never neutral, they are 'technologies of race making ^[17] and mirrors that reflect 'exclusionary attitudes and the racialized anxieties they foment',^[18] designed based on political discourse and anti-immigrant rhetoric that often target groups and migrants defined in and through racial lenses. In Europe, the political discourse on migration is increasingly negative and interlinks with racialized perceptions of migrants which in turn has a significant impact in terms of discriminatory policies and structures that affect migrants.^[19] This new pact is proof of this. EU member states have tried to argue that the new border procedure is not meant to keep racialized communities out of Europe, but rather to stop 'irregular migration'. However, access to regular pathways to immigrate into Europe is not available to all migrants, and often, persons belonging to racialized communities and formerly colonized countries have difficulties accessing permits and legal pathways causing them to seek alternative routes which are not always the regular ones. While Europe may claim that its new border management rules make no reference to race, ethnicity or national origin, it is designed to apply to Muslims, Arabs, Africans, Roma people and people from Latin America, groups that usually find it difficult to access regular pathways into Europe.

3 | Europe's neo-colonialist approach of outsourcing border management to non-EU countries

This new pact sets out to continue its policy of externalizing migration to other geographic regions in efforts to prevent refugees and migrants from reaching European shores. This is so, despite reports of human rights violations and the disproportionate impact on persons from racialized communities. One of the countries, where European leaders have recently reached an agreement, Tunisia, is accused of racist violence against black migrants and refugees.[20] Yet, in the wake of this pact, EU officials visited and pledged hundreds of millions to the Tunisian government to manage migration on behalf of Europe, euphemism for preventing asylum seekers and migrants from reaching European shores. This is not news, in 2021, the Human Rights Council that border externalization has become a standard enforcement tool in the global north, influenced by ethnonationalist, xenophobic and racialized politics seeking to push and leave out certain national and ethnic groups on discriminatory basis.[21] This new pact also legitimizes extraterritorialization of migration and encourages member states to use the 'safe third country' on an individual basis, which is likely going to lead to abuse and the forceful return of racialised migrants to places where their lives will be in danger.[22] This means that under this new agreement, many asylum seekers will be returned to countries like Algeria, Benin, Bangladesh, Egypt, Morocco, Pakistan, Tunisia and Togo. Not exactly your average list of countries known for their respect for human rights and robust asylum protection systems.

Additionally, affluent European countries exploit the asymmetrical nature of their relationship with countries of origin and transit by exerting pressure on them to prevent asylum seekers and migrants from reaching Europe's borders, and to accept the return of asylum seekers and migrants to their territories. Not only is this neo-colonialist, but it also exposes people in need of protection to human rights abuses. Those historically affected are persons from racial, ethnic, religious and national minorities in these countries where they are either detained in or returned to. In many cases, these people are forced to embark on perilous journeys in attempts to circumvent Europe's externalization policies, putting their lives in danger. The Missing Migrants Project recorded about 56,000 reported deaths of people in migration worldwide from 2014 to June 2023, widely considered to be significantly higher. Most of these people are from the Middle East and Africa.[23] Less than a week ago, a boat carrying about 750 people capsized off the Greek coast, near Pylos. With only about 100 people rescued so far and hundreds still missing, we must be reminded that this is not an unexpected tragedy. [24] This is a direct consequence of Europe's externalization policy and disregard for the lives of asylum seekers and migrants. If these heinous policies are not stopped, people fleeing war and persecution will continue putting their lives at risk trying to reach safety by attempting to outmaneuver Europe's externalization efforts.

4 | Solidarity is up for sale:

To make matters worse, instead of a commitment to a solidarity mechanism based on human rights respect and dignity, this pact encourages member states to trade their responsibility to relocate migrants in exchange for €20,000. The choice of 'mandatory solidarity' hailed as a milestone in this pact, in essence means that solidarity is up for sale. To put it simply, the worth assigned to the life and dignity of a migrant from a racialized background is reduced to a mere €20,000. This not only represents a gross disregard for international and European norms of protection and human rights law but also reflects a practice reminiscent of medieval Europe. Such actions have no place today, particularly within Europe, which prides itself on being a community founded on values of inclusivity and respect for human rights. Failing to institute a real spirit of responsibility sharing, means that member states at the EU borders facing so-called 'migratory pressures' will most likely choose pushbacks especially in cases where detention centres are overcrowded because other member states have chosen to offer financial solidarity instead of relocation to their countries. It is most likely that to appease local communities where camps and centres are controversial, pushbacks will become the norm. What is more, by implementing a special procedure for persons from low recognition countries below 20%, this plan legitimises and institutionalizes bias as it discriminates against refugees and migrants who originate from Albania, Bangladesh, Colombia, Georgia, Morocco, Nigeria, Pakistan and Venezuela, countries often the target of racism, xenophobia, and other related intolerances in Europe.[25]

Despite the talk of inclusion and respect for human rights by European leaders, this pact goes in the opposite direction, exposing double standards as it shows that these values do not extend to migrants and refugees, especially if they belong to a racialized community. At best, this new plan betrays the spirit of the EU Action Plan Against Racism which recognized the intersectionality of racism and the specific vulnerability of migrants and refugees by drawing attention to the risk of rising xenophobia and racism towards this group. At worst, this pact not only promotes the racialization of migration, but tells the world at large that the value of the life and dignity of racialized communities in and at the borders of Europe equals €20,000.

Policy Recommendations

The European Network Against Racism calls on the EU institutions to:

1) The European Parliament to ensure that the agreements related to the pact on migration adhere to the principles of respect for human rights, the right to seek asylum, and respect for the principle of non-refoulement as enshrined in international refugee law and is in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.

2) The European Commission to use its 'right of initiative' to draw up a proposal for a new European legislation;

- that is fair, equitable, modern, and can respond efficiently to massive influx of persons in need of protection by investing in preparedness and contingency planning through a well-coordinated needs assessment and early warning system that can be activated in times of influx in ways that guarantee dignified and safe reception centres and provides fair and efficient asylum procedures;
- that ensures the safety and protection of asylum seekers and migrants from all backgrounds, including the specific recognition and protection of the rights of asylum seekers and migrants from racialized communities;
- that decriminalizes acts of solidarity and implements robust measures to support search and rescue operations;
- that establishes clear mechanisms to hold member states, border agencies and institutions like FRONTEX criminally accountable for cases involving deaths and incidents that endanger the lives of migrants at sea and at their borders;
- a comprehensive restructuring of institutions like FRONTEX and the redirection of spending on border protection towards services and resources for asylum seekers and migrants.

3) The European Commission and member state to stop the externalization and extraterritorialization of migration, to avoid discriminatory policies and practices that affect racialized communities disproportionately, to treat all refugees and migrants equally, regardless of race, national origin, religious background or ethnicity by;

- reconsidering and reviewing their policies of externalizing migration and responsibility to neighboring non-EU countries;
- conducting a robust assessment of the treatment of refugees and migrants and the human rights record in countries classified as 'safe third countries' and where there are human rights violations, to remove these from the 'safe third countries' list; and
- to stop offering financial assistance to non-EU countries in exchange for their assistance in stopping asylum seekers and migrants from making it to European shores. Rather, this money should be used to invest in preparedness and efficient asylum procedures.

4) Call on MEPs in Parliament to vote against the new proposals to the migration pact and call for it to be amended into one that encourages a genuine, fair and equitable responsibility-sharing mechanism built on true solidarity and respect of migrants' lives, and avoids reducing solidarity to financial transactions, especially the equation of the lives, dignity and worth of migrants to €20,000.

5) To ensure that the spirit of the EU Action Plan Against Racism which acknowledged the existence of racism and discrimination within the context of migration to Europe and recognized the intersectionality of racism and the specific vulnerability of migrants and refugees is respected. In this vein, EU member states should be reminded that the European Action Plan on Integration and Inclusion calls for the promotion of an integrated approach to migrants' inclusion in Europe, and to have close synergies with EU ARAP and their national action plans against racism (NAPARs).

6) To eliminate bias and discrimination in migration and asylum procedures and policies, the European Union's Asylum Agency should take proactive measures to revise the proposed special procedures for persons from countries with recognition rates lower than 20% and remove this discriminatory criterion and promote a non-discriminatory approach. This proposal perpetuates bias and discrimination against refugees and migrants from these countries and is incompatible with international standards of prioritizing individual assessments over group assessments.

7) To member states to expand opportunities and complementary pathways that are safe and legal to Europe by;

- offering complementary pathways such as educational visas, improving labour mobility schemes, removing obstacles to family reunification, sponsoring community sponsorship ventures, and supporting humanitarian visas and corridors;
- expanding the scope, size, quality and impact of existing and new programmes and solutions for migrants and refugees from racialized communities in Europe;
- improving the focus on protection and investing in adequate and humane reception conditions and access to services.

8) The European Commission to prioritize measures in combatting racism, xenophobia and other related intolerances toward asylum seekers and migrants through;

- a comprehensive restructuring of law enforcement agencies and border officials, which goes beyond mere training and sensitization, and instead focuses on fundamental systemic and structural changes that eradicate racial profiling and all forms of violence against migrants, and promotes empathy, fosters cultural sensitivity, and ensures the unequivocal respect for human rights in the treatment of asylum seekers and migrants, including the hiring of former asylum seekers into decision making processes in these institutions;

- to develop a comprehensive strategy based on the EU ARAP to combat and challenge the narrative and discourse on racism, xenophobia and other related intolerances toward refugees and migrants in Europe; and
- to hold accountable politicians at the local, national and European level who promote racism, xenophobia and other related intolerances.

9) To encourage local, national and at the regional level, the timely collection of disaggregated data that capture patterns and practices of discrimination, and the monitoring and regular assessment of the impact of migration policies and practices on communities that are racialized.

10) For the European Commission to grant extensive empowerment to the European Forum for Migrants, recognizing its potential as a transformative platform for fostering inclusive dialogue, equitable decision-making, and meaningful partnerships in shaping the future of EU migration policies.

ANNEX

- [1] <https://www.consilium.europa.eu/en/press/press-releases/2023/06/08/migration-policy-council-reaches-agreement-on-key-asylum-and-migration-laws/>
- [2] Parmar, A., 2020. Borders as Mirrors: Racial Hierarchies and Policing Migration. *Critical Criminology* 28, 175–192.. <https://doi.org/10.1007/s10612-020-09517-1>
- [3] <https://www.consilium.europa.eu/en/press/press-releases/2023/06/08/migration-policy-council-reaches-agreement-on-key-asylum-and-migration-laws/>
- [4] <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>
- [5] https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en
- [6] https://www.europarl.europa.eu/charter/pdf/text_en.pdf
- [7] For instance, this deal streamlines the asylum procedure by establishing a common procedure under the asylum procedure regulation (APR) for EU member states to follow when people seek international protection. It does this by streamlining the duration of the asylum procedure and setting regulations on the rights of asylum seekers. The claim is that by setting out clear obligations for asylum seekers to cooperate with authorities, ‘abuse of the system’ will be prevented.
- [8] If the applicant is considered a danger to national security or public order, is considered to have withheld information or misled the authorities, or if they are of a nationality with a recognition rate below 20%, this procedure becomes mandatory.
- [9] https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en#:~:text=In%202022%2C%20around%2017%2C300%20people,for%2063%25%20of%20people%20resettled.
- [10] A new solidarity mechanism proposed to ‘balance’ the system where some member states face ‘migratory pressures’. Meaning, member states can either choose to accept the relocation of asylum seekers or pay a financial contribution to a common EU fund of €20,000 per person it refuses to host or provide support for other solidarity measures like capacity building.
- [11] <https://www.hrw.org/news/2023/03/10/tunisia-racist-violence-targets-black-migrants-refugees>
- [12] https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_23_3201
- [13] Recognition rate is defined by the [European Commission](#) as “the number of positive decisions on applications for international protection as a proportion of the total number of decisions issued for each stage of the procedure”.
- [14] <https://www.asylumlawdatabase.eu/en/content/ecthr-rc-v-sweden-application-no-4182707-0>
- [15] <https://ecre.org/editorial-migration-pact-agreement-point-by-point/>
- [16] https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en#seeking-asylum-in-europe
- [17] <https://www.e-ir.info/2020/11/18/interview-luke-de-noronha/>
- [18] Parmar, A., 2020. Borders as Mirrors: Racial Hierarchies and Policing Migration. *Critical Criminology* 28, 175–192.. <https://doi.org/10.1007/s10612-020-09517-1>
- [19] https://ec.europa.eu/migrant-integration/library-document/racism-and-discrimination-context-migration-europe-0_en
- [20] <https://www.hrw.org/news/2023/03/10/tunisia-racist-violence-targets-black-migrants-refugees>
- [21] https://www.ohchr.org/sites/default/files/2021-11/A_HRC_48_76_AdvanceUnEditedVersion.docx

ANNEX

[22] Defined by Art. 38 of Directive 2013/32/EU (Recast Asylum Procedures Directive) as a country in which the applicant does not face persecution or serious harm and has the possibility of seeking refugee status and, if accepted, enjoy protection in accordance with the Refugee Convention.

[23] <https://missingmigrants.iom.int/>

[24] <https://www.dw.com/en/greece-not-an-unexpected-tragedy/a-65944621>

[25] Recognition rates: Granting international protection in EU+ countries, Fact Sheet No 9 (europa.eu)