

THE ISSUE OF ASYLUM IN THE EU

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Abstract:

It is a well-known fact that the core of European identity is the protection of fundamental rights. Achieving this goal has led EU member states to set up a Common European Asylum System (CEAS) in order to cope with the growing problems at European level. To this end, the European Union has adopted a number of important legislative measures aimed at harmonizing the different asylum systems of the member states. Despite directives and regulations aimed at harmonizing the European Union, there are still significant differences between member states in terms of protection, chances and rates of recognition of the refugee status, as well as the reception conditions. A European Refugee Fund has also been set up to provide financial support to member states to enable their asylum systems to work effectively.

Keywords: *migration, asylum, asylum seeker, European asylum system, international protection*

The involvement of EU institutions in managing the migration crisis. The New Pact on Migration and Asylum

For the past ten years, Europe has struggled to cope with the most serious migration challenge since World War II. The European Union's management of migration is scattered across numerous legal and political instruments. This migration challenge has highlighted certain shortcomings in the existing asylum system at Union level.

As a complex issue, migration needs to take into account several issues [1]: the safety of people seeking international protection or wanting a better life; the concerns of countries at the EU's external borders, concerned that the pressures of migration will exceed their capacity and the need for solidarity from other countries; the concerns [2] of other EU member states that, in the event of non-compliance with external border procedures, their asylum, integration or return national systems will not be able to cope with significant migratory flows.

The reform of the Common European Asylum System [3] aims to:

- establish a common framework of contributing to a comprehensive approach to asylum and migration management;

- improve the efficiency and resilience of the system to the pressure of migration;
- eliminate attraction factors, as well as secondary movements;
- combat abuse and improve support for the most affected member states.

Given that there have been no significant developments in this regard, the European Commission proposed in September 2020 a *new Pact on Migration and Asylum* [4], which establishes faster procedures throughout the EU's migration and asylum system, includes a revision of the Dublin Regulation [5] and offers new options for the member states to show solidarity. The pact is the result of long-term consultations with the European Parliament, all member states, civil society, the social partners and the business community and ensures an appropriate balance, which integrates their perspectives.

The Parliament has been involved in preparing the new measures to deal with illegal immigration, laying down rules regarding stricter border controls, and developing this system, which is considered to be more efficient in collecting and storing information about the people entering the EU [6].

In the 2014-2019 legislature, the European Parliament was involved in establishing clear European rules for the distinction between legal migrants and refugees and a fair and equal treatment for asylum seekers [7].

In order to combat this problem, the European Parliament has proposed reforms to the Dublin Regulation. The Dublin III Regulation establishes the EU member state responsible for examining an asylum application. The European document gives applicants greater protection until their status is decided; the regulation also creates a new system for the early detection of problems related to national asylum or reception systems and for addressing the root causes before they give rise to large-scale crises.

The currently applicable Dublin system was originally set up in 1990 and was subsequently updated in 2003 and 2013. Its purpose was to identify a single EU member state responsible for processing an asylum application. The procedure was based on several criteria, including *the first country of entry criterion*. In practice, this means that a small number of member states are responsible for examining most asylum applications. The migration crisis has highlighted the limitations of the Dublin System, which has created particular difficulties for frontline member states.

Following extensive consultations and a fair and comprehensive assessment of the situation, the Commission has proposed improving the whole system, including exploring ways to improve cooperation with countries of origin and transit, ensuring effective procedures, successfully integrating refugees and returning people without a right to reside in the EU. The 2020 legislative proposal aimed to replace the Dublin Regulation with a new regulation on asylum and migration management, which should:

- establish comprehensive governance at EU level for better policy management and implementation;
- more effectively establish a single member state responsible for examining asylum applications;
- ensure a fair sharing of responsibilities between member states through a new solidarity mechanism;
- discourage abuse and prevent the secondary movement of asylum seekers within the EU.

On 29 September 2021 (one year after the adoption of the proposal for the New Pact), the Commission presented a report on migration and asylum. The European Pact has gathered a number of question marks around it, with the European Commission itself stressing in the report that, although technical progress has been made, political agreement on key elements of the pact is still a long way off. The report covers all aspects of migration management, including the current state of migratory movements, an assessment of the impact of the pandemic, the actions of EU border and asylum management agencies, the Commission's ongoing support to member states facing the pressure of migration, funding and unauthorized travel within the EU. The report details the progress made in strengthening the legislative framework and provides a comprehensive overview of cooperation with partner countries, based on the new approach set out in the pact.

The Regulation establishing the European Union Agency for Asylum (EUAA)

As early as June 2017, the Council and Parliament reached a comprehensive political agreement *ad referendum* on all 12 chapters of the Regulation on the European Union Agency for Asylum. The technical work on the proposal was completed before the end of 2017, but its adoption has been suspended pending progress on the rest of the Common European Asylum System (CEAS) package.

The European Commission maintained its 2016 proposal on the EU Asylum Agency Regulation in September 2020, when discussions on the Migration and Asylum Pact were relaunched.

In June 2021, EU member states agreed [8] upon extending the Council's mandate for negotiations on the EU Asylum Agency Regulation.

The Council adopted on 9 December 2021 the *Regulation establishing the European Union Agency for Asylum* [9], which seeks to improve the implementation of the asylum policy in the EU. In addition, it envisages to transform the European Asylum Support Office (EASO) into a "real agency" responsible for improving the functioning of the Common European Asylum System by providing increased operational and technical assistance to member states and contributing to a greater convergence in the assessment of applications for international protection.

Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and revoking Regulation (EU) No. 439/2010 [10] establishes a predictable and reliable migration management system.

The new Crisis Regulation provides for appropriate procedural rules, derogations and a rapid activation of solidarity mechanisms to respond to crisis situations (e.g. the 2015 migration crisis).

The new instrument covers exceptional situations of massive influx of third-country nationals or stateless persons arriving illegally in an EU country of such magnitude and nature that it would:

- render a member state's asylum, reception or return system dysfunctional;
- most likely have serious consequences for the functioning of the Common European Asylum System and the EU Migration Management System;

- make it impossible to apply the Common European Asylum System and the EU Migration Management System.

In addition, the proposed regulation addresses force majeure situations, such as the COVID-19 pandemic, which could arise in the field of asylum and migration management in the EU. It provides for adaptation to EU rules on asylum and return procedures, as well as to the solidarity mechanisms provided for in the new Asylum and Migration Management Regulation.

The proposed crisis instrument also provides for a new status of immediate protection for people fleeing armed conflict during a crisis.

Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and revoking Regulation (EU) no. 439/2010 [11] strengthens EASO's current mandate and facilitates the secondment of experts to member states that have requested operational support. The Agency will be able to facilitate cooperation between member states and third countries, thus also contributing to solidarity between the member states and to the global external dimension of the EU.

In summary, this agency will be responsible for:

- ensuring convergence in the assessment of applications for international protection,
- providing operational and technical assistance to member states.

The European Union Agency for Asylum (EUAA) was set up by relaunching the European Asylum Support Office (EASO) [12], launched in 2011 to coordinate cooperation between EU countries on asylum issues. The purpose of the EUAA is to make the community block's asylum system more effective by being able to help governments relocate and transfer migrants within the EU.

The Agency shall contribute to ensuring the effective and uniform application in the member states of the Union law regarding asylum, with full respect to fundamental rights. In addition, it facilitates and supports the activities of the member states with regard to the implementation of the Common European Asylum System (CEAS), by ensuring convergence in the examination of applications for international protection throughout the Union and by coordinating and strengthening practical cooperation and information exchange [13].

In each member state, the Agency shall enjoy the extensive legal capacity granted to legal persons under their laws. Its registered office is in Malta and Regulation no. 1 of the Council [14] is applied. Cooperation between the Agency and national authorities responsible for asylum and immigration matters and other relevant services shall be based on the principle of good faith. The Agency may be considered a center for the collection of relevant, reliable, objective, accurate and up-to-date information on relevant third countries in a transparent and impartial manner, using relevant information.

In close cooperation with the Commission, the Agency *shall set up a monitoring mechanism* to observe the operational and technical implementation of the CEAS, to prevent or identify possible deficiencies in member states' asylum and reception systems and to assess the capacity and their level of readiness to deal with situations of disproportionate pressure so as to enhance the efficiency of those systems.

Through the monitoring mechanism, the Agency will improve the functioning of the Common European Asylum System. Specifically, where the member states' asylum and reception systems are under disproportionate pressure, the EUAA can provide them with operational and technical assistance; for example, as many as 500 experts - interpreters or case managers - may be sent to support the member states under pressure.

Each year, the Agency shall draw up a report [15] outlining the asylum situation throughout the Union, which shall be submitted to its Management Board, the European Parliament, the Council and the Commission, and the Executive Director of the Agency shall present this annual report to the European Parliament. This annual report on the asylum situation in the Union shall be published.

Conclusions

The challenges facing the EU, due to unprecedented levels of migration flows to Europe since 2015, have highlighted a number of shortcomings and differences between EU policies regarding asylum, external borders and migration. This fact has put pressure on the EU asylum system and highlighted the need to reconfigure a legal framework covering all aspects of the asylum process.

Migration remains an issue that needs to be addressed on a global scale. EU foreign policy on migration is part of the EU's overall approach to migration and is

complementary to European foreign policy and development cooperation. It is based on common objectives set by the member states and is reflected in the Common European Asylum System (CEAS). Cooperation with third countries is included in the Global Approach to Migration and Mobility, through which the EU has initiated a political dialogue and established partnerships with third countries.

According to a series of Eurobarometer surveys conducted for the European Parliament on “perceptions and expectations”, the support of EU citizens for an even stronger involvement in migration has decreased from 74% (in 2016) to 72% (in 2018) [16], following the same decreasing trend.

The Union’s action in this area must be aimed at implementing immediate and longer-term measures focusing on the internal and external dimension of the migration policy and its external borders [17]. The EU details common standards in several regulations and directives, but it is up to the member states to effectively implement the asylum and migration policy, and must ensure that their national legislation complies with both Union law and international agreements.

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- [16] Joanna Apap, Anja Radjenovic, Alina Dobрева, *Quoted opera*, available at: https://what-europe-does-for-me.eu/data/pdf/focus/focus04_r
- [17] See also *Statement by the European Commissioner for Home Affairs, Ylva Johansson*, Brussels, 23 September 2020, available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en: *"Migration has always been and will always be part of our societies. The proposals we present [...] will lead to the development of a long-term migration policy that can translate European values into the concrete management of this phenomenon. This set of proposals will ensure clear, fair and faster border procedures so that no one has to wait in an uncertain situation. The set of proposals provides enhanced cooperation with third countries for rapid returns, several ways for legal migration and firm action against smugglers. In essence, the set of proposals protects the right to seek asylum"*.