

# The New Pact on Migration and Asylum and the war in Ukraine: time for a paradigm shift?

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## Introduction

Since the 2015 'migration crisis', it became apparent that the existing asylum framework, embodied in the Common European Asylum System (CEAS) and Dublin, was in urgent need of reform. However, for years such reforms have been stagnant due to epistemic differences within the EU. In 2020, the New Pact on Migration and Asylum – to this day still under negotiation – was unveiled and has since then retained the 'new' moniker despite its accumulating years. As a result of its stagnancy, the structural problems and inadequacies of the European migration and asylum system persists.

Migration remains highly politicized. Simultaneously, labor shortages and demographic deficits are growing issues that migration can mitigate. As a result, the EU's approach to migration remains schizophrenic, torn between wanting to attract "the right migrants" while simultaneously trying to generate political capital by painting migration as a threat being met with ever-increasing punitive measures. It has become an unsustainable race to the bottom that Europe's response to the war in Ukraine has unwittingly unmasked.

The unprecedented Russian invasion of Ukraine caused a dramatic influx of refugees and asylum seekers to the EU. With this influx, the Temporary Protection Directive (TPD) from 2001 was triggered for the first time. Thanks in part to this swift action, the influx of millions of Ukrainian has been managed beyond expectations even as housing markets, social systems, and populations have felt the strain amidst an energy and looming economic crisis. In the face of indisputable evil in an increasingly post-factual world, Europe has rallied around universal values through tangible actions that were inconceivable during past fractious crises such as the 2015 'migration crisis.'

However, beyond the hitherto unprecedented unity and reactive response matching the unprecedented crisis, questions remain as to what this portends for the future of the European asylum and migration system, and specifically the 'New Pact.' The structural deficiencies and disagreements about a universal framework for migration and asylum remain unsolved. Although the war in Ukraine amply proves the universality of suffering

during war, the universal application of protection and rights to protect people from it remains selective. Although Europe has risen to the occasion, it remains to be seen whether it was yet another ad hoc crisis response, or indicative of a shift towards a robust policy framework. Has the war in Ukraine led to a fundamental paradigm shift? Has the application of TPD changed the trajectory of the lumbering ‘New Pact’ towards developing a universal and just framework for migration and asylum policy?

This paper is the product of the author’s visit to Brussels in 2022 during which six interviews were conducted with civil society and permanent representation representatives. Their qualitative input and assessments are interspersed with desk research by the author. The *raison d’être* of the paper is the recent policy innovations coming off the back of the novel preparedness, agility, and unity at EU level. Simultaneously, these innovations prompt the question of whether the EU can transition from ad-hoc crisis-mode responses into making long-term structural reforms. The temporary nature of TPD inherently prompts this question.

This paper will first outline the current state of play with regard to the progression of the New Pact on Migration and Asylum. This will revolve around an analysis of the current reform process vis-à-vis the new reality of migration. The impact of TPD will be juxtaposed against this analysis, assessing the impact on the reform process itself. Lastly, the paper aims to deliver concluding remarks and interspersed recommendations.

## The New Pact on Migration and Asylum – state of play since the outbreak of war in Ukraine

France, during its Presidency in the first half of 2022, initiated a new ‘gradual approach’ to the New Pact. Towards the tail end of the French Presidency, 21 member and associated states adopted a declaration of voluntary solidarity based on the New Pact’s solidarity contribution mechanism. This progress hearkens back to the ‘flexible solidarity’ mechanism embedded in the New Pact, under which solidarity can take the form of financial contributions to member states taking asylum seekers, voluntary relocation of

asylum seekers, or the sponsorship of return of rejected asylum seekers.<sup>1</sup> Several first-stage passes on Commission proposals as well as Council negotiation mandates on Eurodac and Screening Regulation were similarly adopted under COREPER.<sup>2</sup> Both are also part of the first phase of the French Presidency’s ‘gradual approach.’<sup>3</sup> The solidarity mechanism is, however, voluntary as earlier stated, and temporary; slated to operate for only a year from the onset, and not based on a legislative act at the insistence of some member states. Hence, it is broadly – and optimistically – viewed as a precursor for the eventual adoption of the legislative framework.<sup>4</sup>

While the Eurodac and Screening Regulation are important steps in this gradual approach, neither represents structural leaps of advancement nor evinces a shifting paradigm or political imagination with regards to the Pact itself. Hence, the epistemic differences and political obstacles to the adoption of the overarching framework remain. On one hand, Eurodac and Screening Regulation are pieces of legislation with clear legal obligations for the member states. On the other hand, the limited and voluntary solidarity mechanism lacks legislative gravitas, therefore failing to provide a transparent, reliable, and accountable solidarity mechanism in which relocations – as already envisioned in the New Pact itself<sup>5</sup> – are invariably an integral part.

Thus, it was all the more surprising when the Parliament and five rotating Council Presidencies signed an agreement in September 2022, pledging to finalize the reform of the EU migration and asylum legislative framework by February 2024, i.e. before the end

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<sup>1</sup> European Commission (COM 2020) 609 final, accessed at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020DC0609>

<sup>2</sup> Council of the EU, 22 June 2022, accessed at: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/22/migration-and-asylum-pact-council-adopts-negotiating-mandates-on-the-eurodac-and-screening-regulations/>

<sup>3</sup> Quo Vadis EU Asylum Reform? Stuck between gradual approach, (Mini)-package deals and “instrumentalisation”, Policy Paper 8, ECRE. Accessed at: <https://ecre.org/wp-content/uploads/2022/09/Policy-Paper-Quo-Vadis-EU-asylum-reform-September-2022.pdf>

<sup>4</sup> ECRE, JHA council, accessed at: <https://ecre.org/jha-council-french-presidency-to-push-for-progress-on-gradual-approach-and-agreement-on-the-schengen-borders-code/>

<sup>5</sup> European Commission, New Pact on Migration and Asylum, Effective Solidarity. Accessible at: [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/effective-solidarity\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/effective-solidarity_en)

of the current legislative cycle.<sup>6</sup> This comprises the following legislative proposals: Regulation for Asylum and Migration Management, Regulation for Crisis and Force majeure, Screening Regulation and proposal amending several regulations to facilitate the Screening, Qualification Regulation, Reception Conditions Directive (recast), Amended Asylum Procedures regulation, Return Directive (recast), Amended EUODAC Regulation, and Union Resettlement Framework Regulation.<sup>7</sup>

While the ambition is laudable after years of stagnation first with the CEAS and later the New Pact, it is ultimately hard to envision that the legislative framework in the above-stated permutation will ultimately address the fundamental problems pertaining to the asylum and migration framework. The war in Ukraine highlighted that the resilience of the EU's asylum system is contingent upon its ability to rapidly mobilize and increase its reception capacity in light of events leading to sudden influxes in immigration. The war in Ukraine is unique from a European perspective in the sense that Ukraine already enjoyed visa-free travel to the EU before the outbreak of the war, and that there was a preexisting labor migration from Ukraine to the EU.<sup>8</sup>

Thus, the reception conditions were affected by existing migration and integration networks, and the traditional barriers between refugee status and societal participation (such as freedom of movement) were already lowered as opposed to other refugees, such as from the MENA region. Hence, the TPD activation allowed for clarification of Ukrainian refugees' legal status, ensuring a wider umbrella of rights<sup>9</sup> than traditionally granted to refugees more in line with their preexisting rights, albeit only for up to a three-year

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<sup>6</sup> Joint Roadmap of the European Parliament and Rotating Presidencies of the Council on the organisation, coordination, and implementation of the timeline for the negotiations between the co-legislators on the CEAS and the New European Pact on migration and asylum. Accessed at:

<https://www.europarl.europa.eu/resources/library/media/20220907RES39903/20220907RES39903.pdf>

<sup>7</sup> Ibid.

<sup>8</sup> 2022 MEDAM Assessment Report on migration and asylum policies in the EU, pp. 72-73, accessed at:

[https://www.epc.eu/content/PDF/2022/MEDAM\\_Assessment\\_Report\\_2022.pdf](https://www.epc.eu/content/PDF/2022/MEDAM_Assessment_Report_2022.pdf)

<sup>9</sup> European Commission Temporary Protection Directive, accessed at: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)

timeframe.<sup>10</sup> Moreover, the prospect, however distant, of Ukrainian EU accession furthermore contributes to the novel approach toward Ukrainian refugees.

In the case of an influx of migrants less conducive to political agreement and legislative facilitators, it is highly dubious that similar expediency and mobilization will be achieved. More than 900.000 sought protection in the EU in 2022, an entirely predictable 46.6% increase from the Covid-stricken year before even though everyone is clutching their pearls in surprise, has left existing systems strained and under pressure.<sup>11</sup> It has amply demonstrated that the EU is structurally incapable of replicating its success in absorbing Ukrainian refugees within the constraints of the current system (unfinished as it may be) and paradigm.<sup>12</sup> It is unlikely that the legislative proposals within the New Pact will ultimately erode the underlying disagreements on the policy framework itself, embodied in vagarious phrases such as ‘fair share.’

## Progress without centralization of responsibility at the EU level?

On a fundamental level, the lack of centralization of the asylum system at EU level remains a Gordian knot perpetuating the inequalities - and corollary the disagreements – on an institutional level. Predominantly, the responsibility for migrants remains with the country upon which they first arrive to the EU. Hence, the specter of Dublin is still haunting the system at the root level due to the absence of a mechanism that draws upon – or centralizes – the reception and absorption capacities of all member states, i.e. the EU proper. There is no insulation for exposed member states against becoming overburdened in the case of a sudden influx, nor is there a transparent and reliable key through which responsibility-sharing is facilitated. The existing provisions under the New Pact, such as the

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<sup>10</sup> Temporary Protection Directive Article 4, accessed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0055&qid=1648223587338>

<sup>11</sup> <https://www.france24.com/en/live-news/20230125-eu-grapples-with-asylum-reform-as-migrant-entries-surge>

<sup>12</sup> <https://www.infomigrants.net/en/post/46276/eu-sees-asylum-applications-almost-double-in-2022-european-commission>

‘flexible solidarity’ and ‘critical mass correction mechanism’, are vague to the point that ‘fair share’ – an operative word in the New Pact – is open to very wide interpretation.<sup>13</sup>

The issue of responsibility sharing has plagued the debate for decades and is inextricably tied to the Schengen Agreement and the varying reception conditions across the EU. The fear of ‘asylum shopping’ and ‘asylum orbiting’<sup>14</sup> understandably led to the Dublin regulations in the absence of a centralized system. The absence of convergence in conditions for migrants and asylum seekers across member states, coupled with discrepancies in living standards, socio-economic security, and minimum incomes and similar, makes it impossible to marry Schengen with the overcoming of the Dublin framework provisions. The solutions most often ventured are a distribution key based on various criteria and evaluations of capacities, which are in themselves arbitrary assessments subject to the political winds of a given time. Hence, no permanent distribution mechanism has to this date been agreed.

Perhaps in recognition hereof, the New Pact has since its inception featured a heavy emphasis on return policy and external dimension. The aforementioned screening procedure encompassing registration into the Eurodac database irrespective of the status of the person entering<sup>15</sup>, and a border procedure leading into an obligatory return border procedure in case of a negative asylum decision, are essential components of a wider mandatory, expedited return border procedure.<sup>16</sup> Partnerships with third countries are

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<sup>13</sup> European Commission, New Pact on Migration and Asylum, Effective Solidarity. Accessible at: [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/effective-solidarity\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/effective-solidarity_en)

<sup>14</sup> Traveling to more receptive countries and the possibility of no member state accepting responsibility, respectively.

<sup>15</sup> European Commission, COM(2020) 612 final 2020/0278(COD), “*proposal for a regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders*”. Accessible at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:612:FIN>

<sup>16</sup> European Commission, 23/09 COM(2020) 611 final 2016/0224(COD), “*Amended proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*”. Accessible at: [https://ec.europa.eu/info/sites/info/files/1\\_en\\_act\\_part1\\_v3\\_1\\_0.pdf](https://ec.europa.eu/info/sites/info/files/1_en_act_part1_v3_1_0.pdf)

highlighted as a key component of realizing the ambition of expedited return policies.<sup>17</sup> However, how can the EU facilitate the crucial third-country partnerships needed without a common position to third countries? The frailties of partnerships with third countries, exemplified in Frontex's debacles with Libya, exploration of Rwanda as a processing option, as well as others, highlight the precariousness of the external emphasis. In the absence of a coordinated framework and positions, it is hardly a solid foundation upon which a rights-respectful, sustainable policy framework can be based.

Furthermore, the fact that several countries, such as Denmark, have bilaterally pursued (and subsequently suspended) agreements with third countries such as Rwanda on reception centers and the like, reflect the wider problems of the policy framework.<sup>18</sup> The EU asylum system is currently characterized by EU-level rule-setting combined with a largely decentralized implementation and financial responsibility at member state level. This leads to a largely arbitrary approach to responsibility-sharing among member states due to limited EU oversight.<sup>19</sup> In sum, member states have a degree of maneuvering and interpretative space in implementation that inherently is subject to the political winds of a given time. This leaves ample opportunities to both renege on fundamental obligations and politicize the asylum system for domestic political gains under the legitimate pretense that the financial and social burden of receiving migrants is borne nationally rather than at the EU level. The result is the race to the bottom that has characterized the debate since the 'migration crisis' and under which member states have been enabled in derogating EU law under extraordinary national responses.

Without centralization of responsibility, the inherent flaws marring the system remain insurmountable barring a harmonization of conditions amongst member states. This is naturally impossible for the foreseeable future due to the different social models,

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<sup>17</sup> European Commission, New Pact on Migration and Asylum, Effective Solidarity. Accessible at: [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/effective-solidarity\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/effective-solidarity_en)

<sup>18</sup> <https://www.aa.com.tr/en/africa/denmark-puts-asylum-center-talks-with-rwanda-on-back-burner/2797330>

<sup>19</sup> 2022 MEDAM Assessment Report on migration and asylum policies in the EU, p. 76, accessed at: [https://www.epc.eu/content/PDF/2022/MEDAM\\_Assessment\\_Report\\_2022.pdf](https://www.epc.eu/content/PDF/2022/MEDAM_Assessment_Report_2022.pdf)

economies, and capacities. Coupled with the vagaries of the New Pact’s key provisions on solidarity and dubious ability to institutionalize sustainable third-country partnerships necessary for the return policy to work at the envisioned scale, the reform process is unlikely to achieve the robust framework required for a resilient asylum and migration system. Too much remains subject to interpretation from recalcitrant member states while too little oversight and possibility for corrective action are within the purview of the EU.

Additionally, the humanitarian and protection needs are further marginalized under the ad-hoc, crisis-driven EU approach; extraordinary measures borne out of security concerns (predominantly pertaining to MENA asylum seekers) cascade into ever stricter control-oriented responses. Humanitarian and protection needs are often the first victims in such a securitized discourse, leading either to dubious deportations (as numerous member states were guilty of in relation to Afghans up until the Taliban were knocking on the gates of Kabul) or to calls for restraint out of security concerns amidst legitimate and urgent crises.<sup>20</sup>

### The Temporary Protection Directive – Herald of a new paradigm?

The response from the interviewees to the above-stated question was split evenly. While some argued that a paradigm shift had most certainly occurred, citing the hitherto unprecedented speed with which the EU had responded to the war in Ukraine, others were less optimistic, believing that the exceptional response was, indeed, exceptional. What everyone did agree on, however, was that for the first time in almost a decade, the political space for progress was widening. The EU’s pandemic response and now the response to the war in Ukraine and the energy crisis represent fledgling steps for the EU to evolve into a more geopolitical actor. The wide consensus was that the EU inevitably will have to accrue responsibilities fit for the inexorable challenges in a globalized world.

In this context, the activation of TPD is further emblematic of the Commission coming into its own as an important coordinator and conduit of effective management of multi-level European response. The 10-point plan from March 28, 2022, is but one example of the

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<sup>20</sup> Ibid, p. 25

Commission taking on a complex coordinating role off the back of the war in Ukraine.<sup>21</sup> This is indicative of a more general assertiveness of the Commission evidenced by its efforts to advance resettlement and the creation of legal pathways for Afghans fleeing the Taliban takeover.<sup>22</sup>

As such, the contours of a new paradigm may indeed be emerging about the operational space in which the EU can maneuver. A previously unthinkable elasticity in the boundaries under which EU institutions and agencies can act seemingly reinforces this notion. Whether this “Europeanisation” can materialize into momentum for changes beyond operational support remains to be seen. Perhaps the more important question is whether operational competencies can translate into a more robust policy framework and reforms beyond the heavily securitized paradigm underpinning the New Pact.

In this respect, one has to consider the ramifications of the TPD application in a wider context. Over the past two years, three crises stand out in relation to migration and asylum; Afghanistan, Belarus, and Ukraine. Each has been met with ad hoc responses. Although tailor-made responses have the advantage of flexibility, each further fragments the policy framework. The necessity for a robust framework becomes more manifest as each ad hoc solution spurs unilateral and often derogating approaches by member states. Hence, it will be important to leverage the novel structures and forums under which an emergent intra-EU migration approach is manifesting. Through these crisis-made structures, there is the opportunity to take crisis management beyond temporary agreements and political will – provided the EU pursues tangible incentives for member states to do so.

With regards to the TPD’s impact on the wider framework of asylum and migration policy, the scale is important; more than 4 million Ukrainian refugees were absorbed successfully. The TPD facilitated the reception and social and economic integration due to the granting of rights, such as access to employment, means of subsistence, and freedom of

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<sup>21</sup> European Commission - 10-Point Plan on stronger European coordination on welcoming people fleeing the war in Ukraine, accessed at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_2152](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2152)

<sup>22</sup> European Commission – Providing protection through joint leadership: stepping up resettlement and complementary legal pathways, accessed at: [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_21\\_3628](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_3628)

movement.<sup>23</sup> More importantly, the TPD clarified the legal status of more than 4 million refugees in one, fell swoop; by removing the necessity for determining the legal status of the person in question, the bureaucratic obstacles for determining access to rights, services, and facilities were minimized. This, in turn, facilitated the successful integration of Ukrainians broadly speaking, and inherently led to some dispersion of refugees across member states, even though there is a disproportionate number in the CEE region as opposed to the rest of Europe due to existing labor migration.

However, with the three-year timeframe under which the TPD is active, eventual clarification of the legal status of Ukrainians will be necessary. While EU accession would to a large extent limit this need, it is inconceivable that this would be achieved within the timeframe. The war in itself is likely to also stretch beyond the temporal constraints of the TPD, creating further pressure on a broader framework. Even though the TPD has bought time, and even though the freedom of movement naturally leads to an almost market-driven balancing of responsibility sharing, the equation will inevitably change once the three years are up. This is further compounded by the fact that 48% of Ukrainian refugees only intend to return home once the war is over.<sup>24</sup> As a result, millions of refugees risk falling into a legal limbo that needs to be untangled given that the prospects of an end to the war are nowhere in sight.

Beyond the impact on the legal status of Ukrainians, a framework is also essential for providing the requisite clarity that enables successful integration. Ukrainians have broadly been able to successfully integrate into their host countries due to the rights granted under TPD – rights that are unavailable or heavily curtailed to traditional asylum seekers. This has further highlighted the shortcomings of integration frameworks and systems – largely victims of the securitized paradigm under which integration was derisively dismissed; if migrants are kept out, integration policy frameworks are hardly needed.

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<sup>23</sup> European Commission Temporary Protection, accessed at: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)

<sup>24</sup> Rating Lab, 14<sup>th</sup> national survey, p. 5, accessed at: [https://ratinggroup.ua/files/ratinggroup/reg\\_files/rg\\_1200\\_ua\\_pychomarkers\\_062022\\_%D1%85\\_v\\_press.pdf](https://ratinggroup.ua/files/ratinggroup/reg_files/rg_1200_ua_pychomarkers_062022_%D1%85_v_press.pdf)

While integration remains firmly under national competencies (and should continue to do so), the war in Ukraine increasingly highlights the importance of transforming the humanitarian response into a medium- and long-term migrant integration framework. Corollary to this necessity in the case of Ukrainians, there is a natural impetus for wider reform as a result of this, which is also reflected in the aforementioned pledge by the Parliament and the five Presidencies.

Ultimately, the TPD is exceptional and should remain so. It is manifestly not a substitute for a robust and transparent legislative framework; if it was, it would have been applied earlier. However, the exceptionalism in its enabling is potentially indicative of a broader shift towards migration in general. TPD has highlighted the capacities of member states and the EU alike while simultaneously highlighting the shortcomings of the framework around migration and asylum. In expectation of future crises, not least climate-induced migration, the necessity of a robust system is becoming apparent.

The greying of Europe<sup>25</sup> and its seismic ramifications on the European welfare states and social models have furthermore paved the way for the fledgling shifts in national narratives around migration. The most recent example hereof was the post-election opening of the Danish Parliament, during which even hardline right-wing parties reiterated the need for pathways for refugees and migrants to more easily obtain permanent residency and associated benefits rather than being deported. Hence, one can legitimately wonder if the outsized emphasis on security under the New Pact will be overtaken by a less securitized approach due to socio-economic necessities. If so, the TPD may, as one Perm. Rep. Interviewee pointed out, serve as a blueprint for a more fundamental rethinking of the New Pact that furthermore accomplishes humanitarian obligations better than the New Pact ever could. Its activation during the war in Ukraine could certainly indicate so.

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<sup>25</sup> Demographic Outlook of the European Union 2022, pp. 2-10, accessed at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729461/EPRS\\_STU\(2022\)729461\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729461/EPRS_STU(2022)729461_EN.pdf)

## Concluding remarks and policy recommendations

The war in Ukraine has in itself not changed the reform process of the New Pact; the ‘gradual approach’ institutionalized by the French Presidency is ongoing, and the pledge to finish it in its current permutation within the current legislative period remains the ambition. However, the context of migration and asylum has changed. The Commission has become a more active player, coordinating complex multi-level efforts and governance in a swift and agile manner, acting as both the convener of actors and the agent of action – if not change.

The war in Ukraine and the activation of TPD have made it abundantly clear that a robust framework for responsibility sharing and deeper, EU-level cooperation is necessary for developing a resilient and robust asylum system. The alternative is having to reimagine and reassess solutions for millions of Ukrainians currently subjected to the TPD – with no clear framework for this scenario in sight. The envisioned solution for the framework since the inception of the New Pact has revolved around a heavy emphasis on return policy without properly addressing the original sins of Dublin. The Ukrainian refugees have unraveled this logic, even though the impact is still a couple of years off.

More fundamentally, the New Pact retains the cardinal issues of the CEAS reform attempts before it. Currently, member states have ample opportunities to circumvent both the provisions and the spirit of the system. The reliance on parlance such as ‘fair share’ leaves room for member states to circumvent their obligations. This can take the shape of, for instance, downgrading reception center conditions to discourage asylum seekers, or even force them to pursue engage in behavior that then causes them to fall under ‘illegal’ definitions of migration. The system is inherently vulnerable to the aspirations stipulated under the European values outlined in the Treaties and Charter.

Ultimately, the system remains flawed as long as it is not centralized. As long as the system is operated by member states across the EU whose priorities, approaches, and conditions differ wildly, it will be marred by incongruence and the lowest common denominator. Any number of rules laid down by the EU will not change this. On a more fundamental level, this

undermines the fundamental rights and protection that the system is conceived to provide by subjecting it to politicization due to its disproportionate impact on member states.

While TPD has proven successful in the immediate term, it is not a long-term solution. However, its success shows that there is a novel appetite for European involvement up to a certain degree. Bearing in mind the hereditary shortcomings of the system, it is merited to consider the prospect of centralizing responsibility at EU-level with its finances, operational mandate, and permanent distribution mechanism and responsibility sharing. It is increasingly evident that the success of the system is imperative upon removing the incentives for member states to make themselves as unattractive as possible. If the Union operates reception centers, asylum procedures and integration standards, transparency, and harmonization would be ensured. With own resources, it would equalize the current disproportionate costs while simultaneously alleviating member states towards integration tasks according to common standards (such as linguistic requirements). This funding could be achieved under the NextGenerationEU.

A gradual approach in line with the current trend is compatible and necessary with such a proposal given the sheer scope of the task. While the proposal may seem naïve, it is imperative to note that unless the system and framework become galvanized against the politicization and securitization that currently shapes it. The notion of an asylum framework that satisfies both fundamental and human rights while simultaneously not incorporating a permanent distribution mechanism, responsibility sharing, or harmonization of standards and conditions – is utterly fanciful. Although the New Pact represents an improvement over the void that precedes it, there is a case to be made for building upon the experiences over the past year to develop it more nuancedly beyond the securitization which gave birth to it.

## About EUROPEUM

EUROPEUM Institute for European Policy is a non-profit, non-partisan, and independent think-tank focusing on European integration and cohesion. EUROPEUM contributes to democracy, security, stability, freedom, and solidarity across Europe as well as to active engagement of the Czech Republic in the European Union. EUROPEUM undertakes original research, organizes public events and educational activities, and formulates new ideas and recommendations to improve European and Czech policy making. We are the recipient of institutional funding from the European Commission under the Citizens, Equality, Rights and Values (CERV) programme.



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