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EUROPEAN PACT ON MIGRATION AND ASYLUM: A STEPPING STONE TOWARDS COMMON EUROPEAN MIGRATION POLICIES

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Introduction

On 15 and 16 October 2008, Europe's leaders set their seal on the European Pact on Migration and Asylum¹, which was first approved by the Justice and Home Affairs Council on 25 September 2008. This Pact, which is based on clear political commitments, has already served one political purpose: generating renewed political momentum around the issue of migration management, which is an area where Europe's citizens have high expectations and where Europe can demonstrate its ability to respond to citizens' concerns. Furthermore, the Pact can help Member States to improve their coordination efforts and ensure timely delivery of the policy objectives it sets. Working together makes the EU stronger, not just when dealing with problems such as illegal migration and border management. Common action at EU level also gives Member States a stronger voice on the international stage.

Although the main focus of the October European Council was on how to solve the international financial crisis that has entangled Europe's banking system, careful consideration should be given to the policy implications of the European Pact. In its preamble, the Pact makes it clear that it fits into Europe's existing migration strategy, based on the Global Approach to Migration. In other words, the "migration framework" that the European Migration Pact has devised builds on the achievements accomplished in the first three years of implementation of the Global Approach, and aims to correct identified weaknesses and put forward new proposals. Contrary to what other experts say², the Pact is neither an ill-defined intergovernmental attempt to reduce Europe's influence on migration and asylum management nor a means of consolidating Europe's "security approach", which tends to pay little attention to the rights of migrants. Suffice it to say that the Pact attaches great importance to integration and the effective management of legal migration. If managed well, immigration is one area where our citizens will clearly see the added value of a European approach. Such an approach should help the EU to address, and to a certain extent reduce, unwanted phenomena such as unregulated migration and human smuggling, while ensuring that Europe can welcome the migrants

its economy needs and its society is capable and willing to receive.

The Pact is based on five main pillars, which I quote: (1) to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration; (2) to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit; (3) to make border controls more effective; (4) to construct a Europe of asylum; and (5) to create a comprehensive partnership with the countries of origin and of transit in order to encourage synergy between migration and development. With the exception of asylum policy, all the other four components are part and parcel of Europe's Global Approach to migration.

Political commitments

The European Pact on Migration and Asylum contains new proposals. Five main ideas stand out. First, it calls for "an annual debate on immigration and asylum policies. To that end, it requests the Council, together with the Commission, to present a report each year on the implementation of the commitments contained in the present Pact. Furthermore, it invites Member States to devise quantitative indicators to assess the impact and effectiveness of their policies and to keep each other informed of any new measure or legislative reform they intend to enact". This paragraph encapsulates the strategic role that the Commission will play in the follow-up to implement the Pact. This point dispels any doubt as to the truly European nature of the Pact, as the Commission has been asked to prepare a yearly report to verify to what extent the policy objectives of the Pact have been achieved. On the strength of this, there is no foundation to claim that the Pact is conceived as an intergovernmental initiative. In performing this important duty, the Commission can rely on the assistance of the Member States and other external bodies. To consolidate its internal capacity to gather and analyse migration and asylum data and thus to "devise quantitative indicators", the Commission should consider establishing and funding a specific centre, which was an idea already launched by the then Vice-President Frattini in March 2008. As Vice-President Frattini said: "The main goal of the new European Migration Policy Centre will be to translate research findings into realistic policy recommendations and thus help guide Europe's policy options in the future. Europe needs to have research on its side." The amount of money involved in this undertaking is very modest, some €600 000 per year, as the Robert Schuman Centre for Advanced Studies at the European University Institute in Florence is ready and willing to provide free office space and equipment and to cover part of the costs of research activities. In other words, the Commission should take the lead in setting up this European Migration Policy Centre, as it will add an invaluable asset to Europe's migration and asylum toolbox.

Second, the Pact introduces the principle that large-scale amnesties should be abandoned by Member States, as the dismantling of internal border controls within the Schengen area has made free movement easier. Migrants who are unlawfully residing in a Member State can obtain a regular residence and work permit based on an assessment of the individual's situation. The underlying assumption is that large-scale amnesties have a "pull effect" on potential migrants and thus this approach can undermine the credibility of the legal migration strategy that Europe and the Member States are putting together for the benefit of recipient countries, countries of origin and migrants alike.

Third, as part of increased cooperation with third countries, the Pact proposes, among other things, to "conclude EU-level or bilateral agreements with the countries of origin and of transit containing, as appropriate, clauses on the opportunities for legal migration adapted to the labour market situation in the Member States, the control of illegal immigration, readmission, and the development of the

countries of origin and of transit; the European Council invites the Member States and the Commission to inform and consult each other on the objectives and limits of such bilateral agreements, and on readmission agreements". This point has a distinct advantage. It will signal to third countries that Europe and the Member States intend to offer "comprehensive packages" containing all the components needed to foster legal and circular migration, to prevent and clamp down on illegal immigration networks, and to improve coordination in the area of readmission agreements. Agreements of this kind, however, continue to be the Achilles heel of Europe's migration strategy, as negotiations at European level take years and rarely yield the desired results. This has led several EU Member States to conclude bilateral agreements with third countries in an effort to obtain more advantageous terms, in particular with regard to the return of illegal migrants. Lack of progress and coordination in the area of readmission agreements has brought Europe to the uncomfortable situation where bilateral agreements are the common practice and readmission agreements the exception. The Pact has rightly identified this important issue and sought to address it in the right way. Among the EU Member States, for example, Bulgaria, Estonia and Greece³ are the most efficient in returning apprehended illegal migrants, as they have stipulated bilateral readmission agreements with a number of third countries, which accept the return of their nationals. Europe should spare no effort in its pursuit of readmission agreements for all EU Member States and "equal opportunities" all round.

Fourth, as for integration, the Pact encourages Member States to consolidate their efforts and "to establish ambitious policies". The starting point for Europe is that the political and social costs of failing integration policies are far greater than the cost of well-conceived ones, as the incidents on the outskirts of major European cities have clearly illustrated. Migrants are a crucial part of the EU's competitiveness strategy, but their full potential will not be realised unless they are given the opportunity to integrate into the host society and economy. Integrating legally residing immigrants is therefore a top priority and a key component of the EU's migration policy. This Pact will now enable Member States to start thinking about the way forward. Europe needs to devise and espouse policies which not only address migrants' claims, concerns and interests but which also are inclusive. In other words, the integration process should become more structured. On the one hand, host societies should promote policies that give access to rights and opportunities for immigrants. On the other hand, integration must include migrants' acceptance of the laws, institutional framework, values and principles of the host society.

Finally, building on the proposals contained in the Hague Programme in the area of asylum and on previous Commission initiatives, the Pact pushes for the establishment of a European Asylum Support Office (EASO), which will make it possible to step up practical cooperation between Member States. After years of negotiating and adopting the legislative instruments that Europe needed to establish a fully harmonised EU system, the proposal for the establishment in 2009 of a "European support office with the task of facilitating the exchange of information, analyses and experience among Member States, and developing practical cooperation between the administrations in charge of examining asylum applications" seems to be the right move at the right time. This new office will lead to improvements in the efficiency and quality of Member States' asylum systems and will provide them with a new common "tool" to help respond to their daily and operational needs. It can help Member States share information, including by way of a common database of information on the countries where asylum seekers are from, pool resources and expertise to address reception and asylum processing issues, whenever necessary, and find solutions to emergency situations, such as mass arrivals of asylum seekers, thus giving concrete meaning to the concept of EU solidarity.

Structural drawbacks

The Pact also has three main structural weaknesses. First, the Pact does not even attempt to propose a solution to the heart-rending humanitarian issue involving thousands of migrants who have drowned in the Mediterranean and the Atlantic. Europe cannot simply look on, without taking political action. Europe has to make more of an effort to find a lasting solution to this tragedy if the common principles and values it upholds are to be put into practice. To address this problem, a viable solution would be to gear up the sea patrols undertaken by Frontex together with the Member States and to enhance the capacity of third countries in policing their shores, from which unseaworthy, overloaded boats set sail for the Canary Islands, Greece, Lampedusa and Malta. For Europe, this means offering specific technical assistance and enabling the competent authorities of third countries to carry out this duty more effectively.

Second, since it is essentially an agreement on which mutual trust and respect between Member States has to be consolidated, it is intriguing to note that, despite coordination problems, the Pact does not see any need for inter-ministries and permanent task forces to coordinate efforts and implement all the different parts of the Global Approach to Migration. Each task force would liaise with European and national partners, and take part in all meetings covering implementation of the Global Approach. One of the most visible advantages of this task force is that it will bring together representatives from the various national ministries involved in implementing the Global Approach. In the area of circular migration, for example, the proposed national task forces could help any Member State interested in circular migration projects to get representatives from the ministry of labour (available opportunities in the labour market), the foreign affairs ministry (visa applications) and the home affairs ministry (security aspects) round the same table. This does not often happen in most Member States, as ministries tend to operate as separate cells. This task force could devise a viable national scheme for circular migration, which can then be brought to the attention of the other Member States. In this way, the Commission can gather all the schemes proposed by the Member States and put together a comprehensive pilot project at European level, which is in line with what the Global Approach is intended to deliver in the future. This would certainly improve coordination between Member States, thereby making considerable headway in migration management both at national and at European level.

Third, the Pact states that “illegal immigrants on Member States’ territory must leave that territory”. This principle is sacrosanct, but it is nonetheless a daunting task. Europe has given Member States a legal instrument on return policy to harmonise the procedures regulating the expulsion of illegal immigrants and a fund for this purpose amounting to €676 million for the period 2008-2013. Moreover, the Frontex Agency is tasked with organising joint return flights on behalf of requesting Member States in an effort to pool available financial resources, improve practical cooperation between Member States, and return illegal third-country nationals from the same country of origin. In spite of this “arsenal”, return policy continues to be unsatisfactory, as Member States find it very difficult to effect removals of third-country nationals unlawfully residing in their territory (see appendix). For example, according to the latest available information on return decisions and actual removals, the number of return decisions issued decreased from 521,244 in 2004 to 488,475 in 2007 (-6.3%), while the number of actual removals went down from 252,391 in 2004 to 226,179 (-10.4%). The difference between the number of apprehended third-country nationals and the number of removals is mainly due to the fact that neither the Community nor several of the Member States have enforceable readmission agreements with the third countries that illegal migrants are from. This means that there is a considerable time lag between the issuance of the expulsion order and actual expulsion, as third countries sometimes delay the identification of apprehended third-country nationals by their consular staff. This can lead to delayed expulsion and even no expulsion at all when the person cannot be clearly identified. Bulgaria, Estonia and Greece are the

exceptions to this rule, as in some cases they can expel third-country nationals without an expulsion order because their bilateral readmission agreements do not need a return decision to be issued as a legal precondition for removing unlawfully residing third-country nationals. If the effectiveness of the return policy is to be measured by comparing the number of removals to the number of return decisions, the 'effectiveness rate' was 48% in 2004 and 46% in 2007. It must therefore be concluded that about half of return decisions in the EU are effectively carried out and end in the removal of the third-country nationals concerned.

Conclusion

The European Migration Pact is a golden opportunity that simply must not be missed. It can help Europe to polish and, where necessary, to enhance some of the aspects of its migration strategy, which integrates both the internal and external policies of the EU and covers both legislation and practical cooperation. No doubts can be harboured as to the truly "European nature" of the Pact, which will certainly prove to be an invaluable aid on the road towards common European migration policies.

Appendix

The order of countries is based on the best performer principle, i.e. on the ability of an EU country to return apprehended illegal immigrants to their countries of origin. The EU Member States are divided into four main groups. Complete data were not available for Luxembourg and Denmark.

Countries	Return decisions (2005-2007)	Actual removals (2005-2007)	Ratio Removal/ decision
Greece	54.608	141.777	2.60
Estonia	183	252	1.38
Bulgaria	3.310	4.380	1.32
Slovakia	7.360	6.616	0.90
Latvia	613	537	0.88
Cyprus	10.720	9.219	0.86
Slovenia	12.036	8.938	0.74
Spain	125.903	85.958	0.68
Portugal	18.719	10.746	0.57
Austria	47.850	26.780	0.56
Poland	38.571	20.947	0.54
Malta	4.602	2.423	0.53
United Kingdom	250.300	130.323	0.52
Finland	11.996	6.085	0.51
Sweden	51.063	25.254	0.49
Hungary	23.247	11.385	0.49
Netherlands	81.952	39.368	0.48
Germany	135.352	62.202	0.46
Italy	236.862	68.000	0.29
France	226.494	55.063	0.24
Belgium	126.589	29.213	0.23
Czech Republic	31.185	6.607	0.21
Lithuania	3.179	656	0.21
Ireland	11.773	2.110	0.18
Romania	14.244	1.957	0.14
EU TOTAL	1.528.711	756.796	0,50

Source: Centre for information, discussion and exchange on the crossing of frontiers and immigration (CIREFI)⁴
 Legend: Return decisions are expulsion orders issued by the competent authorities of a Member State. They include the number of unlawfully residing third-country nationals apprehended and subject to expulsion.
 Actual removals are expulsion orders enforced by each EU Member State. They include the number of unlawfully residing third-country nationals returned to their countries of origin.

Notes

- (1) Council of the European Union, "European Pact on Immigration and Asylum", No 13440/08, ASIM 72, Brussels, 24.09.2008.
- (2) Carrera, S. and Guild, E. "The French Presidency's European Pact on immigration and asylum: intergovernmentalism vs. Europeanisation? Security vs. Rights?", Centre for European Policy Studies, Policy Brief, No. 170, September 2008. Collett, E. "The EU Immigration Pact – from Hague to Stockholm, via Paris", European Policy Centre, Policy Brief, October 2008.
- (3) In absolute terms, Greece has the highest number of returns of the whole European Union (141.777 people for the period 2005-2007). For further information, see appendix.
- (4) The objective of CIREFI is to help Member States examine legal immigration, prevent illegal immigration and facilitator networks, detect forged documents and improve expulsion practice. CIREFI was set up by decision of the Ministers for Immigration on 30 November 1992 and is composed of experts from the Member States, who meet every month.