



SOC/649
A New Pact on Migration and Asylum

OPINION

European Economic and Social Committee

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum

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1. Conclusions and recommendations

- 1.1 The EU needs to strike the right balance between effective and realistic migration management that is humane and sustainable, while ensuring security and control of its external borders. In addition, the EU must send a clear message to Europeans that migration can be better managed collectively.
- 1.2 The EESC takes note of the presentation of the new PMA, which details the Commission's five-year work plans on common immigration and asylum management. In this sense, it is more of a Commission work agenda than a pact. The proposals accompanying the PMA are important but insufficient for the development of the common European framework for migration management, which would be both effective and in line with the EU's values and objectives. The EESC regrets that the new PMA devotes most of its proposals to the management of external borders and return, while failing to pay due attention to regular channels for immigration, safe pathways for asylum or the inclusion and integration of non-EU nationals in the EU.
- 1.3 The EESC regrets that the PMA makes no mention of the United Nations' Global Compact for Safe, Orderly and Regular Migration (2018) as a multilateral precursor to a proposal for international migration management. We support the strengthening of a rules-based global multilateral system¹, including in the area of mobility and migration, and encourage the Commission to coordinate the new Agenda with the global policies and instruments². Moreover, we encourage EU institutions and Member States to place migration and mobility within the larger Sustainable Development Goals UN Framework.
- 1.4 The PMA correctly highlights the inconsistencies between Member States' asylum and return systems, and emphasises the need to boost solidarity. However, it is not clear if the principle of voluntary and selective solidarity will help solve major coordination challenges. No mention is made of the incentives for the Member States to participate in this mechanism, especially following the refusal by some of them to participate in the previous relocation programme. If they are incentivised to participate, it is not in the area of relocation – the most pressing, difficult and costly issue - but in the area of capacity-building and return.
- 1.5 The EESC considers that the projected pre-entry screening system and border procedures are inadequate. First, the screening system does not provide enough procedural guarantees for the respect of the fundamental rights by persons accessing it. As it stands now, it puts greater pressure on countries to take a swift decision and thus not show due regard for the individual rights enshrined in the 1951 Geneva Convention, especially non-refoulement. Second, as was the case with the hotspot approach, the conditions of reception for migrants and asylum-seekers alike are a serious concern which has to be fully addressed³.

¹ [OJ C 14, 15.1.2020, p. 24.](#)

² The Commission work programme for 2021 provides for the adoption of a Joint communication on strengthening the EU's contribution to rules-based multilateralism in the second quarter of 2021.

³ The EESC has been active visiting hotspots and engaging with civil society actors involved in all the dimensions of migration and integration.

- 1.6 The EESC looks forward to receiving the EU's strategy on voluntary return and reintegration, a document which hopefully will significantly advance strong reintegration measures, and thus move away from an approach centred primarily on policing. Return should involve various social, economic and political actors who can create a more comprehensive and humane environment.
- 1.7 The Committee welcomes rescue initiatives at sea that genuinely seek to save lives. For the EESC, search and rescue at sea is an international legal obligation to be fulfilled by Member States, with effective and adequate public mechanisms being provided for this purpose. Related to that, the EESC considers that sustained efforts are necessary to prevent the criminalisation of humanitarian actors who perform much-needed search and rescue operations.
- 1.8 The EESC welcomes the initiatives to improve shared responsibility and better governance of migration flows with non-EU countries. The Committee is, however, concerned about the use of cooperation mechanisms that could lead to the externalisation of EU migration management or turn migration management into a negative incentive for these countries, as well as the temptation to make development aid and cooperation conditional on the development of migration control and/or readmission policies.
- 1.9 The EESC welcomes the development of safe and legal pathways to access European territory, especially through resettlement and community-sponsored programmes. However, it considers that these channels only meet the needs of individuals with a specific profile and do not provide comprehensive, effective or secure responses to the need for regular channels of immigration into the EU. The EESC regrets that measures to improve legal entry routes are confined to attracting talent and to revising the Blue Card and study and research directives. A comprehensive approach to mobility is essential in order to offer alternatives that go beyond border control and return.
- 1.10 The EESC would like to draw attention to the working and living conditions of numerous third-country nationals, especially those in agriculture. Member States and their specialised bodies must confront the cases of abuse and exploitation and civil society organisations and trade unions must be encouraged to engage with third-country nationals, irrespective of their level of employment and pay.
- 1.11 The EESC is concerned that the fight against networks could have the effect of breaching the rights of trafficking and smuggling victims, and is concerned in particular at the involvement of non-EU countries where the fundamental rights of such individuals, or decent living conditions, are not respected. We have for example seen how the fight against human trafficking is used to try to criminalise humanitarian action.
- 1.12 The EESC believes that the fight against people-smuggling and trafficking networks must continue, and fully recognises the need to make the directive on sanctions for those who employ people illegally more effective.

1.13 The EESC looks forward to the development of the Action Plan on Integration and Inclusion for 2021-2027⁴ presented recently. The EESC is disappointed that this issue, which is crucial to coexistence in our societies, warrants so little attention in the PMA. There is no indication in the Communication of the scale and structure of support for the integration measures. The EESC has extensive experience with the issues related to integration and unfortunately the new PMA in its current form lacks ambition and clarity regarding the tools and incentives offered to different stakeholders.

2. Background

2.1. On 23 September, the European Commission presented its new work agenda on immigration and asylum, *A New Pact on Migration and Asylum*. This document follows on from the work agendas that have been developed in this area since 1999, in chronological order: Tampere (1999), The Hague (2004), Stockholm (2009) and the European Agenda on Migration (2015).

2.2. The new Pact on Migration and Asylum aims to provide a new framework for action to ensure freedom of movement in the Schengen area, safeguard fundamental rights and achieve an effective migration policy. The PMA has been in preparation since December 2019, involving two full rounds of consultations with all Member States, the European Parliament, national parliaments, civil society, the social partners and businesses, with the aim of incorporating a range of different perspectives. The PMA will be presented shortly to the Parliament and the Council.

2.3. The 2015 European Agenda on Migration provided an immediate response to the crisis situation in the Mediterranean, but the PMA seeks to ensure a new, lasting European framework to deal with the different challenges facing Member States, both in normal situations and in emergency or crisis situations, in ways that always reflect European values.

2.4. The Commission observes in the PMA that, as of 2019, 20.9 million non-EU nationals live in Europe (4.7% of the total population) and that around 3 million first residence permits were issued in the Member States in that year. EU countries hosted 2.6 million refugees in 2019 (0.6% of the total EU population) and 698 000 new asylum applications were submitted in that year. The Commission also notes that in 2019, 142 000 people tried to enter the territory of the European Union illegally, and that only one third of returns were actually carried out.

2.5. To deal with this new context, which is very different from the 2015-2016 period, the PMA seeks to share responsibility more evenly among Member States and improve solidarity between them, making progress on more effective management of migration, asylum and borders, with better governance and closing current gaps.

2.6. The PMA focuses on three main areas: (1) improving cooperation with non-EU countries of origin and transit in order to improve migration management (2) improving the management of the EU's external borders, stepping up technical cooperation and identification mechanisms and

⁴ See [COM\(2020\) 758 final](#).

amending and updating procedures to ensure greater clarity in the allocation of responsibilities and (3) establishing a new permanent mechanism for solidarity.

- 2.7. Specifically, the PMA seeks to promote the robust and fair management of external borders, including identity, health and security checks; fair and efficient asylum rules, streamlining asylum and return procedures; a new solidarity mechanism for situations of search and rescue, pressure and crisis; stronger foresight, crisis preparedness and response; an effective return policy and an EU-coordinated approach to returns; comprehensive governance at EU level for better management and implementation of asylum and migration policies; mutually beneficial partnerships with key third countries of origin and transit; the development of sustainable legal pathways for those in need of protection and to attract talent to the EU; and support for effective integration policies.
- 2.8. The presentation of the PMA is accompanied by other new documents, which warrant closer consideration, as they set out the details of the work agenda proposed in the PMA. The Commission (1) proposes an Asylum and Migration Management Regulation, including a new solidarity mechanism; new legislation is proposed to establish a screening procedure at the external border; (2) amends the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective; (3) amends the Eurodac Regulation proposal to meet the data needs of the new framework for EU asylum and migration management; (4) sets out a new strategy on voluntary return and reintegration; (5) adopts a Recommendation on cooperation between Member States regarding rescue activities carried out by private entities; (6) presents the Recommendation on legal pathways to protection in the EU, including resettlement; (7) proposes legislation to address situations of crisis and force majeure and repealing the Temporary Protection Directive and (8) presents a Migration Preparedness and Crisis Blueprint.

3. **Comments on the presentation of the New Pact on Migration and Asylum**

- 3.1 The EESC takes note of the presentation of the new PMA, as it details the Commission's five-year work plans on common immigration and asylum management. The proposals accompanying the PMA are important but insufficient for the development of the common European framework for migration management, which have to be both effective and in line with EU's values and objectives. The EESC therefore considers it essential to examine them in some detail.
 - a. **A common European framework for migration and asylum management**
- 3.2 The PMA correctly highlights the inconsistencies between Member States' asylum and return systems, and emphasises the need to boost solidarity within the EU by overcoming shortcomings in implementation and to improve and strengthen cooperation with non-EU countries. However, it is not clear if the principle of voluntary and selective solidarity will help solve the major coordination challenges of the last decade.
- 3.3 The PMA seeks to improve entry procedures by facilitating the swift identification of persons applying for refuge and by pushing forwards the return processes of those trying to reach

European territory irregularly. The proposal for new pre-entry screening procedures is intended to facilitate rapid processing, allowing returns to third countries that are safe or of origin, while at the same time ensuring that applications are examined on a case-by-case basis.

- 3.4 The EESC believes that pre-entry screening mechanisms are a novel contribution worth considering, but wonders how feasible it would be to implement them in practice. Not only does the five-day period for completing the screening not appear to help the countries that receive the greatest numbers of people irregularly by sea; it also looks as though it would put greater pressure on those countries to take a swift decision, and would make it very difficult for this to be done with the necessary guarantees and in accordance with the principles of safety and the protection of rights under the international asylum system, in other words, showing due regard for the individual rights enshrined in the 1951 Geneva Convention. Nor does it seem clear how return procedures will be improved, when most of these have not worked properly – as the PMA itself recognises – not only because of the lack of technical capacity in EU countries, but also because of a failure to react on the part of the host countries.
- 3.5 According to the proposal, asylum applications made at the EU's external borders must be assessed as part of EU asylum procedures; they do not constitute an automatic right to enter the EU. This procedure will probably create major problems at the sites of pre-entry, sites that must be prepared to accommodate significant numbers of individuals and an additional incentive to proceed to faster returns. Border procedure risks reducing safeguards and risks the increase of detention or detention-like circumstances. The use of the Country of Origin Information and Safe Countries concepts in organising the pre-entry screening are particularly problematic as they work against the evaluation on a case-by-case basis⁵. Granting international protection is not a function of citizenship but of threats and risks on the life of individuals.
- 3.6 The EESC welcomes the fact that alternative approaches are sought to determine the State responsible for examining an application for international protection in the light of the difficulties that have been identified to date. The EESC wonders, however, what these alternatives will be and what the change will consist of, when the proposal for a new regulation on international protection procedures to include a new border procedure and make asylum procedures more efficient simply sets out the same approach taken by the Dublin regulation currently in force.
- 3.7 Under the new solidarity mechanism, Member States would be able to participate in the relocation or sponsored return of persons in an irregular situation. The EESC harbours doubts as to the feasibility of this mechanism, which is based, furthermore, on a hypothetical voluntary solidarity. No mention is made of the incentives that Member States would need to participate in this mechanism, especially following the refusal of some of them to participate in the previous relocation programme⁶ or of the lack express obligation: it should be pointed out that this "solidarity-based" mechanism may also have the contrary effect of relocating the individual concerned to the sponsoring Member State, if the return is not actually carried out within eight

⁵ See [OJ C 71, 24.2.2016, p. 82](#).

⁶ [Judgment in Joined Cases Commission v Poland, C-715/17, Hungary C-718/17 and the Czech Republic, C-719/17](#).

months. This might lead to accountability gaps regarding rights of returnees. Furthermore, under the proposed new solidarity mechanism, Member States are incentivised not to participate in relocation – the most pressing, difficult and costly issue, they can opt instead for participation in return⁷.

- 3.8 The EESC welcomes the shortening of the periods for securing long-term residence from five to three years for persons benefiting from international protection when they decide to stay in the Member State that has provided them with such protection. The aim is clearly to facilitate integration into local communities, although it could be deemed to be limiting mobility within the EU.
- 3.9 The EESC welcomes the measures to improve coordination between national strategies on asylum and return policies, but regrets that more proposals have been made on coordination for return instruments than on coordination on asylum and refugee reception procedures.
- 3.10 The EESC also welcomes the planned establishment of the European Union Agency for Asylum, as a necessary step forward in bringing greater convergence and better implementation of the common rules on asylum.
- 3.11 The EESC considers that progress on protecting and providing assistance to the most vulnerable groups, such as migrant minors, especially when travelling without their family, is essential⁸. The European Guardianship Network should play a greater role in the protection of such individuals, and their integration and inclusion in EU countries should be improved by offering them legal assistance, accommodation, access to education, etc.
- 3.12 The EESC encourages the Commission and the Member States to take a more proactive stance in the identification and protection of women and girls who become victims of trafficking for sexual exploitation or other forms of gender-based violence.
- 3.13 The EESC notes the difficulties EU countries face in ensuring effective returns, as well as the Commission's willingness to move towards a common and effective European system of returns. The proposal is based on improving operational support for returns and suggests that national return coordinators be appointed. The EESC regrets that problems in the operation of return programmes are not properly identified⁹, which make this position – considered to be of strategic importance – dependent on the willingness to collaborate of non-EU countries, whether of origin or transit.
- 3.14 The EESC looks forward to receiving the EU's Strategy on voluntary return and reintegration, a document which hopefully will significantly advance strong reintegration measures, and thus move away from an approach centred primarily on policing. This is the risk if Frontex extends its mandate to help more effective return processes, and its operations do not link with various

⁷ Unfortunately there are no safeguards against situations in which some governments decide to become key players of return as part of populist mobilisation against migrants and refugees.

⁸ See [OJ C 429, 11.12.2020, p. 24](#).

⁹ [Communication COM\(2017\) 200 final](#).

social, economic and political actors which can create a more comprehensive and humane environment for return.

3.15 The EESC considers that it is essential to improve the accountability mechanisms for FRONTEX's actions, and to monitor its activities and ensure that they protect and secure people's fundamental rights.

3.16 The EESC highlights the importance of protecting the personal data recorded in Eurodac and that the need for and proportionality of the measures taken must be justified, given the sensitivity of the data included, especially where applicants for international protection and the confidentiality of the procedure are concerned¹⁰.

b. A robust migration crisis preparedness and response system

3.17 The EESC welcomes the progress made on improving the prevention and management of migration crises and the potential measures to be adopted to ensure solidarity between Member States and the protection of the fundamental rights of persons likely to be affected by such crises. The EESC regrets, however, that this approach is based on the concept of "hotspots", which have proven to be places in which the rights of persons seeking international protection in the EU are breached.

3.18 The EESC understands the need to improve the mechanisms for dealing with crisis situations, but questions the value of rethinking the Temporary Protection Directive, for example, when this has not been properly implemented in recent years. As stated before, the EESC urges the Commission and the other EU institutions not to restrict in any way the access to international protection and not to limit its content.

c. An integrated border system

3.19 Management of the external borders is a responsibility shared between the EU and its Member States, and the need to evaluate the implementation instruments is key. The EESC wishes to point out that the use of human or technological resources must always be proportionate to the reality of the situation and must, without exception, show due regard for individuals' fundamental rights and freedoms.

3.20 Reaching full interoperability of IT systems is a necessary step toward building a coherent and effective EU-wide policy. Full interoperability should be achieved quickly and with due regard to protection of personal data and fundamental rights.

3.21 The Committee therefore welcomes rescue initiatives at sea that genuinely seek to save lives, but expresses its concern at the involvement of private companies whose actions are not strictly monitored, nor their adherence to the framework of human rights. For the EESC, search and rescue at sea is an international legal obligation to be fulfilled by States, with effective and adequate public mechanisms being provided for this purpose.

¹⁰ [OJ C 34, 2.2.2017, p. 144.](#)

- 3.22 Related to that, the EESC considers that sustained efforts are necessary to prevent the criminalisation of humanitarian actors who perform much-needed search and rescue operations.
- 3.23 The EESC wishes to express its concern at the risk of turning private boats into detention centres for asylum-seekers in the light of the passivity shown by some Member States.
- 3.24 The EESC welcomes the efforts to ensure the normalisation of free movement in the Schengen area and looks forward to seeing more details about the Schengen evaluation mechanisms soon. The EESC also looks forward to the planned Strategy on the future of Schengen, and hopes it will lead to a stronger and more complete Schengen.

d. Strengthening the fight against people-smuggling

- 3.25 The EESC believes that the fight against people-smuggling and trafficking networks must continue, and fully recognises the need to make the directive on sanctions for those who employ people illegally more effective: the EESC therefore considers it useful to establish mechanisms to encourage the reporting of people or enterprises taking advantage of victims of trafficking, victims of people-smuggling and persons without work permits ¹¹.
- 3.26 The EESC is concerned that the fight against networks could have the effect of breaching the rights of trafficking and smuggling victims, and is concerned in particular at the involvement of non-EU countries where the fundamental rights of such individuals, or decent living conditions, are not respected. We have for example seen how the fight against human trafficking is used to try to criminalise humanitarian action.

e. Working with our international partners

- 3.27 The EESC welcomes the initiatives to improve shared responsibility and better governance of migration flows with non-EU countries. The Committee is, however, concerned about the use of cooperation mechanisms that could lead to the externalisation of EU migration management or turn migration management into a negative incentive for these countries, as well as the temptation to make development aid and cooperation conditional on the development of migration control and/or readmission policies. It is important to reiterate that migration policy, cooperation and development aid policy and trade policy must be differentiated in the EU's external action, and all from the perspective of absolute respect for human rights.
- 3.28 Similarly, the EESC deems it necessary to strengthen cooperation with those countries that host a considerable number of refugees, provided that this does not mean limiting the opportunities of these individuals to gain access to European territory and provided that the EU takes a proactive interest in their living conditions including the protection of their rights in host non-EU countries.

¹¹ For example, Spanish legislation includes the concept of "working ties", whereby – under certain conditions – if an irregular foreign worker reports his or her irregular employer, he or she will obtain legal documentation. Similarly, Portugal has a permanent case-by-case regularisation process for specific situations.

- 3.29 The EESC welcomes any joint initiative to make progress on building cohesive societies in non-EU countries, to reduce poverty and inequalities there, and to promote democracy, peace and security, but does not believe that these issues should be linked to cooperation on controlling migratory flows by the countries involved. Helping to strengthen the migration management capacities of non-EU countries is positive, but it should not be linked to their role in controlling outward flows or readmission agreements.
- 3.30 The EESC notes that the PMA attaches great importance to cooperation with non-EU countries on issues of readmission. However, it should also take into account the risks of breaches of rights to which returnees may be subject, and the incentives that these countries may request in order to accept cooperation with the EU.
- 3.31 The EESC welcomes the development of safe and legal pathways to access European territory, especially through resettlement and community-sponsored programmes. However, it considers that these channels only meet the needs of individuals with a specific profile (those seeking international protection) and do not provide comprehensive, effective or secure responses to the need for regular channels of immigration into the EU.

f. Attracting talent and skills to the EU

- 3.32 Talent partnerships are a value-added initiative offering a legal pathway, and the EESC welcomes this initiative¹² despite the fact that it will have negative consequences for countries of origin, particularly in terms of their ability to implement sustainable development. The EESC regrets that measures to improve legal entry routes are confined to attracting talent and to revising the Blue Card and study and research directives as their scope is limited. A comprehensive approach to mobility is essential in order to offer alternatives that go beyond border control and return.
- 3.33 The EESC wishes to participate in the public consultations on the attraction of talent and skills to the EU, but reiterates the overarching need to address labour markets beyond these areas.
- 3.34 The EESC would like to draw attention to the working and living conditions of numerous third-country nationals, especially those in agriculture. Member States and their specialised bodies must confront the cases of abuse and exploitation and civil society organisations and trade unions must be encouraged and stimulated to engage with third-country nationals, irrespective of their level of employment and pay.

g. Supporting integration for more inclusive societies

- 3.35 The EESC considers that the inclusion and integration of non-EU nationals is key to ensuring social cohesion in the EU and looks forward to analysing the Action Plan on integration and inclusion for 2021-2027. The EESC is disappointed that this issue, which is crucial to coexistence in our societies, warrants so little attention in the PMA.

¹² See [OJ C 341, 21.11.2013, p. 50](#) and [OJ C 458, 19.12.2014, p. 7](#).

3.36 There is no indication in the Communication of the scale and structure of support for the integration measures. The EESC expects the new Action Plan on Integration and Inclusion for 2021-2027 to address this shortcoming in the PMA. The EESC has extensive experience with the issues related to integration and unfortunately the current form lacks ambition and clarity regarding the tools and incentives offered to different stakeholders.

Brussels, 27 January 2021

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