

Meijers Committee

standing committee of experts on international immigration,
refugee and criminal law

CM2009 General comments of the Meijers Committee on the New Pact on Migration and Asylum 2020

November 2020

The New Pact on Migration and Asylum was launched by the European Commission in September as a remedy for the manifold problems of the EU's migration and asylum policy. The Meijers Committee welcomes and supports this astute attempt at overhauling core elements of the Common European Asylum System. As the European Commission correctly states, comprehensive reforms are urgently needed.

The Meijers Committee is an independent group of legal professionals and experts. We present detailed legal comments on the new legislative proposals of the Pact in separate documents. The links to these documents are included at the end of this letter. Here, our Committee shares a number of general observations on the proposed package as a whole.

The Meijers Committee identifies the following, cross-cutting, shortcomings of current laws and policies, which are to a considerable extent shared by the Commission:

- The lack, despite earlier harmonisation attempts, of a common and uniform practice of deciding on asylum claims in the Member States, in normal situations as well as in times of crisis;
- The situation at the external borders not being considered as a responsibility of the Union as a whole;
- Inadequate solidarity between Member States in terms of sharing administrative and financial burdens and taking care of asylum-seekers and refugees;
- Ineffective return policies resulting in large numbers of migrants staying irregularly in the EU;
- Large differences between Member States in conditions for legal migration, despite seven EU directives on regular migration.

The New Pact provides a comprehensive response through a number of new or updated regulations and other instruments. The Meijers Committee realises that this set of proposals must be seen in the context of a politically divided European Union. Member States differ deeply in their views on (legal) migration and their willingness to take in refugees. We recognise that improvements in this field cannot be reached overnight or by making revolutionary steps. Indeed, the New Pact is primarily an attempt at breaking the deadlock in the Council to agree on core elements of the European Agenda on Migration that was published in 2015. While this is recommendable and realistic, it also risks to lose sight of the structural issues in the current design of the EU asylum system as well as the human rights of migrants concerned.

A fresh start?

Despite the reforms being labelled as a fresh start, important elements of the new proposals are less novel than they seem, which raises the question what their actual impact will be. For example, the swift screening of asylum seekers at the border is already possible within the current legal framework, but is often unsuccessful because of a lack of administrative capacity. Further, the new proposal for an Asylum and Migration Regulation is very similar to the Dublin III Regulation and although more sanctions for absconding migrants are included, it retains incentives for non-compliance on the part of both asylum seekers and Member States.

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No firm solidarity commitments

By neither clearly defining key terms that trigger solidarity mechanisms nor the content of solidarity – leaving ample room for political manoeuvring – the proposals fail to provide legal certainty on the key issue of solidarity.

No level playing field

Despite the aim of further curtailing Member State discretion, the new package continues to leave fundamental choices on how EU law is implemented and applied to the Member States. In the context of mandatory border procedures for example, which arguably is the most forceful element of the proposals, it is worrying that it is left to the Member States to decide on the important question of whether those subjected to the border procedure will be detained. Another example is that Member States are free not to apply the Return Directive to those whose application is rejected in a border procedure. The goal of a level playing field for asylum seekers will therefore remain elusive. This also makes it difficult to gauge the (human rights) impact of some of the proposals.

Window dressing

In some areas the proposals offer little more than window dressing. This is especially true for the pledge to develop legal pathways to Europe as alternative to dangerous journeys. On closer inspection, there are no major initiatives for new EU programmes in the sphere of labour migration. Most of the legal initiatives focus on the economic needs of Member States, including attracting skills and talent. One cannot realistically expect these proposals to seriously reduce push-factors for third-country nationals towards the EU.

Administrative capacity

The question still remains how the EU wants to ensure that Member States will correctly apply the rules and meet their commitments – such as the stricter time limits that are being proposed. According to Eurostat, the stock of pending asylum cases in the EU is more than 400.000, of which the majority are applications that were brought more than six months ago. Many shortcomings in the sphere of asylum and return sprout from insufficient Member State capacities and this is not only the case in the so-called frontline Member States. Arguably more important than overhauling the law is the requisite administrative capacity for law application is effectively organised. Although various initiatives are being presented (such as flexible solidarity and assistance by EU agencies), the primary responsibility in terms of finances and personnel continues to lie with Member States. Mutual assistance between Member States and operational assistance of the EU remain opaque and subject to complicated legal frameworks. It is also unclear to what extent national asylum and return policies will be funded by the new Multiannual Financial Framework.

Fundamental rights

The Meijers Committee is concerned about the fundamental rights effects of the proposals. Collectively, the proposed instruments are likely to lead to more detention, especially at the external borders, and they will curtail procedural rights considerably, including in the Dublin procedure, the asylum and return border procedures and in procedures on subsequent applications. As we explain in our detailed comments on the proposals, this leads to tensions with the case law of both the European Court of Human Rights and the EU Court of Justice. Our Committee finds the impact of detention – in terms of numbers and effects for individual migrants – poorly studied and motivated. A further clear human rights risk is created by the increased reliance on cooperation with third countries (externalization) and EU agencies assisting individual Member States. However desirable this cooperation may be, it should be accompanied with clear rules allocating legal responsibility and not jeopardize the effectiveness of legal remedies.

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Conclusion

Although the Meijers Committee is partly appreciative of the direction of the reforms, it has considerable doubt that the package as a whole will effectively address the systematic shortcomings mentioned above. The Committee therefore urge both Council and European Parliament to initiate the required improvements to the Commission's proposals. The Committee has specified recommendations to this effect in separate documents. These documents can be found here:

- [CM2010](#) [Comments on the proposal for an Asylum Screening Regulations](#)
- [CM2011](#) [Recommendations for a new Strategy for the Future of Schengen](#)
- [CM2012](#) [Comments on the proposal for an Asylum and Migration Management Regulation](#)
- [CM2013](#) [Comments on the proposal for a Crisis and Force Majeure Regulation](#)
- [CM2014](#) [Comments on the amended proposal for an Asylum Procedures Regulation](#)