CODIFYING CRISIS: A BORDER STUDIES PERSPECTIVE ON THE EU'S NEW PACT ON MIGRATION AND ASYLUM

A Eur-Asian Border Lab Policy Paper

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Disclaimers

Acknowledgements

Key messages

- The EU's New Pact on Migration and Asylum institutionalises practices of crisis management, creating a permanent architecture for border screening and containment.
- 'Solidarity' under the Pact functions as a form of internal bordering, redistributing responsibility through financial and operational mechanisms rather than relocation.
- The Pact marks a structural shift: from emergency response to routine governance through crisis logic.
- Policymakers should anticipate operational frictions, political contestation, and external dependency risks as the Pact moves toward implementation.

Keywords: EU Migration Pact; Border Studies; Crisis Governance; Solidarity Mechanism; Asylum Policy

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Overview

The European Union's New Pact on Migration and Asylum represents the culmination of a decade-long effort to reform an asylum system strained by the 2015 migration crisis. While framed as a 'fresh start', the Pact effectively codifies crisis-era practices into permanent governance mechanisms. This policy brief applies a border studies perspective to assess how the Pact reconfigures the EU's approach to migration management, solidarity, and external border control
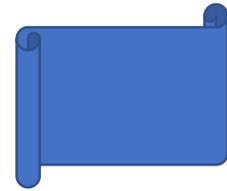
The central bargain: Contextualising the European Union's Pact on Migration and Asylum

The European Union's New Pact on Migration and Asylum, set to enter into force in June 2026, represents the culmination of a nearly decade-long effort to reform a system that proved unworkable under the pressure of the 2015 migration crisis. The collapse of the 2013 Dublin III Regulation, which assigned asylum responsibility to the Member State of first entry, created a geographically determined imbalance that disproportionately burdened frontline states like Greece and Italy with migration reception and asylum case processing responsibilities (Nascimbene 2016). While the ensuing political deadlock necessitated a comprehensive "fresh start" (Gambazza 2024; EPRS 2025), the Pact is best understood not as a return to a pre-crisis norm, but as an attempt to institutionalise and normalise the exceptional measures that emerged during that period, such as ad-hoc containment zones or 'hotspots.'

At its core, the Pact codifies crisis-driven practices—rapid filtering, containment in border facilities, and prevention of onward movement—through a central political bargain: frontline states agree to implement stricter, faster procedures at the external border in exchange for a guaranteed, albeit flexible, solidarity contribution from other Member States (European Commission 2024a). This brief analyses this trade-off through a border studies lens, viewing the Pact not simply as a set of regulations, but as a collection of *bordering practices* that redefine spaces, categorise people, and reconfigure bilateral relations. It examines the Pact's dual architecture of hardened external controls and managed internal responsibility-sharing, offering a critical perspective on its implications for governance and policy implementation.

Explaining the new architecture: control and compromise

The Pact establishes a new, two-sided system that fundamentally alters procedures at the EU's external border and redefines the nature of solidarity between Member States.

A. The hardened border: New procedures for frontline states

Frontline Member States are now mandated to implement a multi-stage process designed to rapidly screen, assess, and channel arrivals, effectively creating a zone of triage at the border.

- *Pre-entry screening:* All individuals arriving irregularly (e.g., without proper entry documentation) at an external EU border will undergo a mandatory screening within a maximum of seven days. For those apprehended within the territory, this period is shortened to three days. This process, defined in the Screening Regulation, is a "preliminary filter" involving identity, security, and health checks, and is underpinned by a significant expansion of the Eurodac database into a comprehensive migration management tool (Screening Regulation [EU] 2024/1356).

- *Accelerated border procedures:* Following screening, certain categories of applicants are mandatorily channelled into an accelerated border procedure. This

applies to those deemed a security risk, those who have misled authorities, and, perhaps most significantly, nationals of countries with an EU-wide asylum recognition rate below 20%. The asylum and subsequent return phases are each designed to last 12 weeks. However, this mandatory channelling is governed by an EU-wide initial "adequate capacity" cap of 30,000 persons in the accelerated border procedure at any given time, which is distributed as a quota for each Member State (Asylum Procedure Regulation [EU] 2024/1348). If a Member State reaches its national quota, its obligation to apply the accelerated border procedure is suspended for certain applicants (notably those from low-recognition-rate countries), who must then be admitted to national territory to enter the 'standard' asylum procedure. These quotas and caps create cascading operational bottlenecks: high arrival numbers could push asylum applicants back into the slower in-territory systems the Pact was designed to relieve.

●   *The 'legal fiction of non-entry':* A cornerstone of this regime is the expanded application of the "legal fiction of non-entry" (Rondine 2024). While the legal texts do not use this explicit phrase, they codify its effect by stating that individuals in these procedures "shall not be authorised to enter the territory of a Member State" (Screening Regulation [EU] 2024/1356). This concept, historically limited to airport transit zones, is now extended to land and sea borders to legally justify lower procedural safeguards and what amounts to *de facto* detention (EPRS 2024).

The above mechanisms do not operate in isolation but form an integrated system of control. The screening process is designed to gather the data necessary to channel individuals into the mandatory border procedure. The 'legal fiction of non-entry', in turn, provides the legal basis for holding individuals in border facilities for the duration of both screening and the subsequent, extended asylum procedure. This creates a seamless process designed for rapid filtering and containment, where security objectives are prioritised from the first moment of contact.

B. The political price: The 'mandatory solidarity' mechanism

In exchange for cooperation with Pact guidelines, frontline EU states are guaranteed support through a new solidarity framework under the Asylum and Migration Management Regulation (AMMR). Defined as "mandatory, but flexible," it compels contributions from EU Member States while offering a choice in their form (AMMR Regulation [EU] 2024/1351). The options are relocation, financial contributions, or alternative measures like operational support and "return sponsorship" (i.e., financing and organising the return of a rejected applicant from another Member State).

The financial architecture of this mechanism is nuanced and requires precise understanding. The widely cited figure of €20,000 per person is not a fixed fee specified in the regulation. Instead, it is a *derived political value*, calculated by dividing the minimum annual target for financial contributions (€600 million) by the minimum annual target for relocations

(30,000). This figure is the metric used to determine the equivalent value of a financial contribution when a state opts out of its relocation share. This must be distinguished from the separate, explicit financial support payment made to a Member State that accepts a relocated person, set at €10,000 per person (€12,000 for an unaccompanied minor) to incentivise participation and help cover integration costs (AMMR Regulation [EU] 2024/1351).

A border studies lens: The Pact's deeper implications

This section integrates key concepts from anthropology and critical border studies to interpret the Pact's deeper implications.

- **The border as a probabilistic filter:** The Pact transforms the external border into a zone for filtering human mobility. The mandatory use of the accelerated procedure for nationals from countries with a <20% protection recognition rate (Asylum Procedure Regulation [EU] 2024/1348) is a direct codification of *probabilistic bordering* (Bozcali 2020), where an asylum seeker's access to full border procedures is predetermined not by their individual claim, but by the statistical average of recognition for their entire nationality. This filtering represents an evolution of migration governance, moving beyond the ad-hoc 'hotspots' of 2015 to create a permanent legal framework for differentiating populations. This has led legal scholars like Moreno-Lax (2024) to critique this process as a move towards "structured dehumanisation," arguing that prioritising group statistics over

individual claims erodes key protection principles.

- **Normalising the 'state of exception':** The EU's border facilities are quintessential "liminal spaces" (Turner 1994)—"grey zones" (van der Woude and van der Leun 2017) geographically inside the EU but juridically outside. The Pact expands this by making the socio-legal "state of exception" (Agamben 1998) a pre-planned governance tool. The legal engine for this is the Crisis and Force Majeure Regulation, which allows Member States facing a 'crisis' to derogate from core asylum and reception obligations (Crisis and Force Majeure Regulation [EU] 2024/1359). This move, paradoxically, normalises 'crisis measures', transforming them from a sovereign response to an emergency into a predictable, legally sanctioned instrument of migration management (Campesi 2024).

- **Solidarity as an internal bordering practice:** The Pact's solidarity framework functions as a form of internal bordering, regulating the presence of asylum seekers within the Schengen Area. The option for an EU state to substitute a financial payment for the physical hosting of a person is in significant tension with Article 80 of the Treaty on the Functioning of the European Union (TFEU), which mandates a "principle of solidarity and fair sharing of responsibility." This transactional approach effectively allows wealthier states to 'buy their way' out of responsibility, creating a *de jure* system of

differentiated belonging and potentially reinforcing the same geographical imbalances the principle was meant to mitigate (ECRE 2024).

Practical insights for practitioners: Forecasting friction

The Pact's vast, complex architecture creates points of political, operational, and legal friction that are already becoming evident.

- **Political friction:** Hungary and Poland voted against the Pact's final adoption in May 2024. Subsequently, in September 2024, the Netherlands and Hungary formally requested to opt out of the solidarity mechanism, directly challenging its mandatory nature before implementation. The politicisation of 'crisis' declarations also presents a high risk for asylum-seekers in need of protection, as human rights organisations fear the mechanism will be used opportunistically to lower protection standards (Panayotatos 2021).

- **Operational friction:** Frontline states face immense challenges. The European Commission's own Common Implementation Plan acknowledges the "significant" infrastructural and human resource investments required to meet the mid-2026 deadline (European Commission 2024c). This raises the risk of systemic breakdowns and inhumane conditions, replicating the failures of the 2015 'hotspot' approach on a larger scale. Furthermore, the Pact's logic hinges on efficient returns, yet it contains no new binding mechanisms to compel

third-country cooperation, a persistent structural vulnerability.

- **Geopolitical dependencies:** The Pact deepens the EU's reliance on non-EU 'transit countries' for migration containment and control. The situation at the Poland-Belarus border in 2021, for instance, saw the Belarusian government actively facilitate the movement of third-country nationals to the border. This state action was immediately framed within the EU as the 'instrumentalisation' or 'weaponisation' of migration. This powerful narrative served to justify exceptional measures, shifting the political focus onto migrants as a security threat and away from the humanitarian consequences of the EU's own externalisation and migration deterrence policies. By making migration control a key deliverable in partnerships with countries like Tunisia and Libya, the EU creates further structural dependencies that can be exploited, ceding political leverage and risking complicity in human rights abuses that cause severe reputational damage (Amnesty International 2025).

Conclusion

The New Pact on Migration and Asylum is designed to create a more predictable and manageable EU asylum system. It fundamentally redesigns the EU's framework by replacing an unsustainable system of voluntary solidarity with a mandatory, yet flexible, set of contributions. Its core operational change is the transformation of the external border into a permanent zone for screening and

processing, institutionalising crisis-management tools to prevent uncontrolled onward movement.

For policymakers, the focus now shifts to implementation and navigation of the system's inherent complexities. The early political challenges from Member States like the Netherlands and Hungary, coupled with significant operational hurdles, suggest a difficult road ahead. The Pact's long-term success is contingent on factors it cannot directly control, such as third-country cooperation on returns, and on a significant build-out of administrative and detention capacity in frontline states. More fundamentally, the Pact deepens an enduring structural tension within the Common European Asylum System: how to operate core mechanisms reliant on *de facto* detention, probabilistic bordering, and the commodification of responsibility within a legal order founded on the values of human dignity and respect for fundamental rights.

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