Silver Linings

Progressive Elements of the EU Migration Pact and Their Limits

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In June 2026, after a two-year transition, the EU Migration and Asylum Pact became applicable across the Union. Its adoption in April 2024 drew condemnation from across the political spectrum. The European Council on Refugees and Exiles, representing 122 NGOs, called it "a dark day for Europe", while Viktor Orbán called it "another nail in the coffin of the European Union". Scholarly assessments have been similarly critical, and we share some of the criticisms. But the Pact changed European asylum law in two important ways its critics often miss: It made intra-EU solidarity permanent, automatic, and binding on every Member State. Furthermore, it codified specific entitlements for asylum seekers and beneficiaries of international protection that national courts and the Court of Justice of the European Union can enforce. Advocates and policymakers can build on both of these two elements, even as they forcefully critique many other problematic aspects of the Pact.

From Dublin to Mandatory Solidarity

The solidarity mechanism responds to a defect that has shaped European asylum policy since the 1990 Dublin Convention, that responsibility for examining an asylum claim falls on the country of first entry by default. The UNHCR objected to this rule from the start, and the 2015–16 crisis exposed its consequences. More than 850,000 people arrived in Greece by sea in 2015, and fewer than five percent applied for asylum there. The EU responded with two Council Decisions mandating the relocation of 160,000 asylum seekers from Greece and Italy (Decisions 2015/1523 and 2015/1601). The Decisions survived legal challenge by Hungary and Slovakia before the Court of Justice but produced only 34,705 relocations against a net target of 98,256. Poland and Hungary accepted no transfers under the relocation scheme.

The Temporary Protection Directive of 2001, designed for mass-influx situations, lay dormant for two decades because activation required a Council decision that Member States declined to take. Its first activation, for those fleeing Russia's 2022 invasion of Ukraine, showed what European solidarity can look like when the political will exists: protection without individual status determinations, free choice of Member State, and unanimous support in the Council, including from Hungary and Poland. As Linos and Chachko argued, the Ukraine response is the best contemporary example of genuine responsibility sharing.

Which country processes an applicant's claim remains the key question of EU asylum and migration policy. The Member State processing the claim bears significant immediate costs of initial integration, even if ultimately the asylum seeker obtains asylum and transitions to permanent residency and citizenship in a different Member State, becoming a net contributor to society there. The EU Pact on Migration and Asylum addresses a harder version of this question: how to organize solidarity when political will cannot be presumed.

How the New Mechanism Works

The Pact comprehensively reforms and centralizes EU asylum and migration policy and consists of 10 distinct legislative instruments. One of these, the Asylum and Migration Management Regulation replaces ad hoc bargaining with a standing procedure. Each year the Commission assesses the migratory situation, identifies Member States under pressure, and proposes the composition of an Annual Solidarity Pool. The Council

establishes the Pool on the basis of pledges made in the High-Level EU Solidarity Forum. Every Member State must contribute a fair share, calculated from a formula of 50% population and 50% GDP. Readers of Linos and Kempf's earlier analysis of Next Generation EU will recognize the approach: a transparent allocation formula, administered by the Commission rather than negotiated among interior ministers, attached to binding obligations.

Flexibility made agreement possible. Member States choose how to contribute: by relocating applicants from states under pressure, by paying 20,000 euros for each applicant they decline to relocate, or by providing operational support such as staff, equipment and capacity building. The Pool carries minimum volumes, including at least 600 million euros from national budgets, outside the ceilings of the Multiannual Financial Framework. Responsibility offsets favor accepting an applicant over payment, allowing a Member State where an applicant is already present to examine the claim itself and count that processing toward its solidarity obligation, rather than transferring the person back to the state of first entry.

The first cycle went further than the 2015–17 relocations. By December 18, 2025, every Member State except Hungary and Slovakia had pledged: eight offered relocations or other solidarity support, fifteen offered financial contributions or alternative measures, and four were exempted in light of their own migratory situation.

What Asylum Seekers Gain

Solidarity between states does not by itself protect individuals, and the mechanism's intended beneficiaries are Member States. The recast instruments, however, also improve the position of applicants and beneficiaries in concrete ways. Under the new Reception Conditions Directive, applicants gain access to the labor market after six months rather than nine, and the period now runs from registration of the application (within five days) rather than lodging (within 21 days). Material reception conditions include an enumerated minimum: housing, food, clothing, personal hygiene products, and a daily expenses allowance with a freely spendable cash component.

The Qualification Regulation replaces a directive that left "core benefits" to Member State discretion with an enumerated floor: income support, assistance in the event of illness or pregnancy, parental and childcare assistance, and housing benefits. Healthcare provisions guarantee equal treatment with nationals, including treatment of mental disorders. Family definitions now cover adult dependent children and adult siblings acting as caregivers. Minor applicants must be given access to education within two months rather than three, and young people who turn 18 during their schooling no longer lose access. Residence permits are harmonized upward: a minimum of three years for refugees and one year for beneficiaries of subsidiary protection, with mandated renewal periods and seamless renewal, replacing national practices in which initial permits ranged from six months to ten years.

These are incremental changes. Each, however, fixes a deadline, a floor, or a definition that litigants can invoke before national courts and the Court of Justice, at a time when mainstream parties across Europe are converging on restriction.

The Court's Early Interventions

The Pact also contains mandatory border procedures, expanded screening, and a safe country framework that accelerates rejections. Early judicial developments suggest the Court of Justice will police these provisions closely. In August 2025, the Grand Chamber held in *Alace and Canpelli* that applications from designated safe countries of origin may be examined in accelerated border procedures, subject to three conditions: (i) designations must be made by legislative act subject to effective judicial review; (ii) the information underlying a designation must be accessible to the applicant and the reviewing court; and (iii) a country qualifies only if it offers adequate protection to its entire population, in every part of its territory and for every group. Several of the seven countries the EU designated in April 2025, among them Egypt and Bangladesh, may not meet that standard.

Advocate General Medina's opinion on the Italy-Albania protocol applies a similar discipline to externalization. Invoking the ERTA doctrine, she argued that Member States cannot conclude bilateral asylum agreements where EU law has harmonized the field and the agreement would affect common rules. On her reading, Member States may locate facilities offshore, but the harmonized rules on detention grounds, legal assistance and release travel with them. If the Court follows the opinion, future bilateral arrangements of this kind will be largely preempted.

Limitations

Criticisms of the Pact come from many quarters. Both the Court of Justice of the European Union and the European Court of Human Rights are critically reviewing rapid forced return procedures to ensure that Member State preferences to quickly determine asylum claims remain consistent with extensive asylum procedural protections built over decades. Centrist bureaucrats also worry about the high financial and logistical cost of "innovative procedures," the dominant euphemism for processing hubs in countries such as Albania or Rwanda. And activists decry the barriers to the exercise of the right to asylum that the significant securitization investment has put in place.

The Pact's improvements reach only those who obtain access to an asylum procedure in Europe, without creating new safe and legal routes. Silga cautions that the generosity extended to Ukrainians has historically been reserved for displaced populations perceived as European. Costello, Bridle, and Palmiotto argue that the defining shortcomings of European asylum processes thus remain unaddressed, from the absence of safe and legal routes to arbitrariness in decision-making.

Moreno-Lax, Geddes, and Curtin each locate deeper pathologies in the EU's border regime, from the negation of the Union's constitutional values to restriction licensed by imagined crises and the covert "hardwiring" of the external border through databases and automation. The solidarity mechanism operates after pressure has materialized rather than distributing responsibility in advance according to capacity, and its minimum volumes fall short of crisis-level needs. Because contributions are fungible, frontline states may receive money rather than relocations. Beneficiaries who move to another Member State forfeit access to employment and benefits and restart the five-year period toward long-term residence, which in practice immobilizes them in the granting state.

Goldner Lang argues that the Pact's capacity to deliver on efficiency, solidarity, and fundamental rights remains uncertain. By 2025 December, Hungary and Slovakia have refused to pledge at all. A joint declaration of the 46 members of the Council of Europe in May 2026 – a warning shot to the European Court of Human Rights – raises concerns about governments' willingness to follow the Pact's asylum procedures. Much will depend on whether the Commission enforces the new obligations.

Conclusion

The Pact passed the European Parliament by margins as narrow as 301 votes to 272 with 46 abstentions, in one of the most hostile political environments in the history of European integration. What survived those negotiations includes the first operational, binding expression of the solidarity principle in Article 80 TFEU, and a set of enumerated entitlements that asylum seekers did not previously hold. Advocates now have benchmarks for national implementation, the EU Asylum Agency has standards to consolidate through guidance and monitoring, and litigants have new provisions to invoke. A full assessment of the Pact must record its restrictive turn alongside these gains.

The authors build on key aspects of the Pact in a chapter in Contemporary Challenges of EU Asylum and Refugee Law and Policy (Iris Goldner Lang & Janine Silga eds., Oxford University Press, forthcoming 2027). The authors are grateful to the editors as well as Gráinne de Búrca, Cathryn Costello, Deirdre Curtin, Joanne Scott, Joyce De Coninck, Violeta Moreno-Lax, Andrew Geddes, Maciej Grześkowiak, Anu Bradford, Effrosyni Charitopoulou, Kristin Fabbe, Elias Dinas, Martin Ruhs, and participants at the 2025 Academy of European Law (AEL) and the April 2026 AEL Workshop for helpful comments

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