

# **WHOSE PACT?**

## **THE COGNITIVE DIMENSIONS OF THE NEW PACT ON MIGRATION AND ASYLUM**

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# QUESTIONS

❖ **The cognitive dimensions  
of the New Pact**

❖ **PACT'S PRIORITIES**

**1. Are you a 'real refugee' or an  
'expellable irregular immigrant'?**

**2. Accelerated status  
determination on arrival and  
expulsions**



# KEY FINDINGS

- ❖ Localisation, Speed and De-Territorialisation
- ❖ Asymmetric Solidarity or *à la carte*
- ❖ Intergovernmentalism: Whose Pact?



# **KEY FINDING 1: Localisation, Speed and De-Territorialisation**

**Focus on 'EU External Borders' – “entry” not authorized unless authorization**

- ❖ **Proposal Regulation on Screening at External Borders (COM(2020) 612)**
- ❖ **Proposal Regulation on Asylum Procedures (COM(2020) 611)**

# KEY FINDING 1: Localisation, Speed and De-Territorialisation

- ❖ Mandatory Pre-Border Screening Procedure - **localization**
- ❖ While screening takes place persons **not allowed or presumed to enter - de-territorialisation**
- ❖ Obligation to stay in designated facilities - **detention**

# KEY FINDING 1: Localisation, Speed and De-Territorialisation

- ❖ Individuals channeled to **asylum and return procedures**
- ❖ **Border Procedures** obligatory: false documents, national security or fast-tracking (below 20% recognition rate)
- ❖ 12 weeks Period (**Detention**)
- ❖ **Speed** in expulsion procedures: merging rejection asylum application and return decision, and **one appeal**

# KEY FINDING 1: Localisation, Speed and De-Territorialisation

- ❖ **Blurring** international protection and 'migration management'
- ❖ How policies co-create **irregularity and onward mobility**
- ❖ **Reduced procedural standards and remedies** – arbitrariness and discrimination
- ❖ **Transferability of Policies? Worst Practices**

# DIAGNOSIS

## Shall we start with the Facts?

### According to the Pact:

- ❖ “Share of migrants with **low chance of being granted international protection increased...EU first instance recognition rate fell to 30% in 2019**”
- ❖ **Assumption:** majority of asylum seekers are **not** true beneficiaries of international protection or refugees.
- ❖ Member States “**to return a higher number of irregular migrants** with inadmissible or rejected asylum claims”.

# DIAGNOSIS

## Shall we start with the Facts?

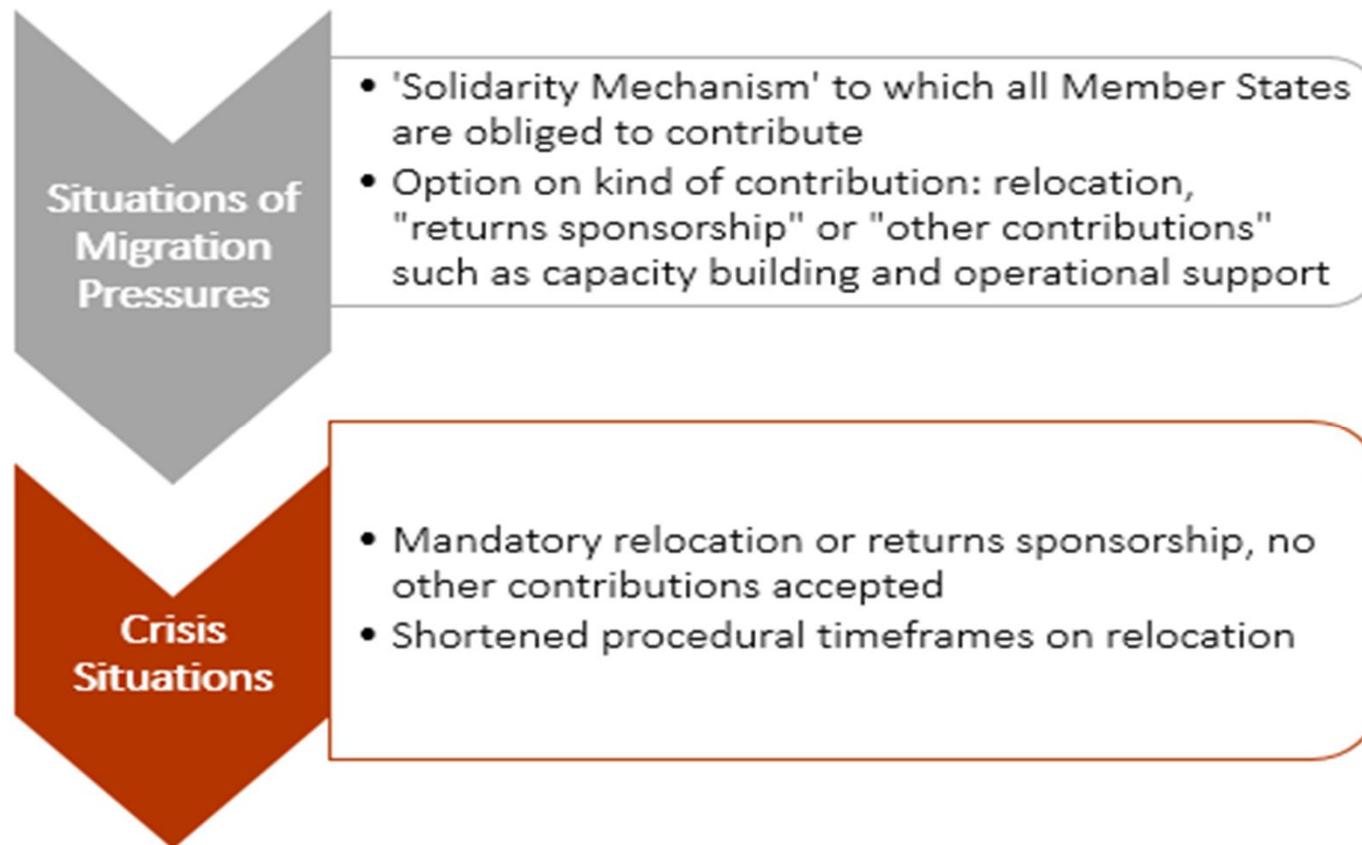
- ❖ **EUROSTAT: in 2019 a total of 540 800 first instance decisions on asylum applications, out of which 206 000 persons granted international protection: 38.1% positive recognition decisions.**
- ❖ However, 296 600 appealed a negative outcome, out of which 91 000 resulted in protection status: 55% positive recognition rate

## **KEY FINDING 2: Asymmetric Solidarity**

- ❖ **Proposal Regulation on Asylum and Migration Management (COM(2020) 610)**
- ❖ **Proposal Regulation addressing situations of crises and force majeure in the field of migration and asylum (COM(2020) 613)**

# KEY FINDING 2: Asymmetric Solidarity

## ❖ A two-layered inter-State Solidarity



## KEY FINDING 2: Asymmetric Solidarity

- ❖ Dublin Regulation **first irregular entry rule** stays (Art. 21)
- ❖ **'Solidarity' as 'Return Sponsorships'?**
- ❖ What is **'Crisis' & 'Migration Pressures'**? Wide discretion
- ❖ **Derogations:** Lengthier Border Procedures: + 8 weeks and decisions on merits of asylum application

## KEY FINDING 2: Asymmetric Solidarity

- ❖ ***'Flexibility'*: Mandatory Flexible Solidarity**
- ❖ Flexibility as Differentiation and **'Less EU'**
- ❖ Member States **to free-ride or opt out** delivering the right to seek asylum
- ❖ **Solidarity towards individuals? Legitimate Onward Movements inside the EU**

# KEY FINDING 3: Intergovernmentalising EU Policy – Whose Pact?

What is a Pact and between whom is it concluded?

- ❖ Unclear to whom does it belong to, and between whom concluded
- ❖ **It is not a Pact**
- ❖ **European Commission *policy agenda and main Owner***

# KEY FINDING 3: Whose Pact?

- ❖ **EU Treaties:** decision-making **ONLY** starts **AFTER** Commission presents legal acts
- ❖ Pact aims at promoting ‘mutual trust through policies acceptable **to all** EU Member States’: **consensus building**
- ❖ Shaped by ‘**collective learning**’ from failing 2016 Commission Proposals

# KEY FINDING 3: Whose Pact?

- ❖ European Council role in blocking reform by applying ***de facto* unanimity and ‘package approach’**
- ❖ Pact resurrecting artificial need for unanimity in Council:  
**QMV**
- ❖ Illegal and at odds with **principle of inter-institutional balance and EU Treaties decision-making rules**

## **KEY FINDING 3: Whose Pact?**

- ❖ **Early concessions** to Member States before publication
- ❖ **Reshaping controversial national policies into EU ones**
- ❖ **Hungarian and Polish governments:** Under Art. 7 TEU for systematic rule of law and institutionalized xenophobia

# CONCLUSIONS



## *On Rights and Justice*

- ❖ **Dual understanding** implications for refugee protection and human rights
- ❖ **Artificially relabeling people** with legitimate international protection claims and onward mobility as “irregular”
- ❖ **Flexibility or ‘Balance’ does not apply** in respect of obligations to safeguard rights of everyone **first**

# REFERENCES

## ASILE Project FORUM on the New Pact on Migration and Asylum

[https://www.asileproject.eu/df\\_the-new-eu-pact-on-migration-and-asylum/](https://www.asileproject.eu/df_the-new-eu-pact-on-migration-and-asylum/)

