

Daniel Thym | Odysseus Academic Network (Eds.)

Reforming the Common European Asylum System

Opportunities, Pitfalls, and Downsides of the
Commission Proposals for a New Pact on Migration and Asylum



Nomos

Schriften zum Migrationsrecht

edited by

Prof. Dr. Jürgen Bast, Universität Gießen

Prof. Dr. Ulrike Davy, Universität Bielefeld

Prof. Dr. Anuscheh Farahat, Universität Erlangen-Nürnberg

Prof. Dr. Andreas Fischer-Lescano, Universität Bremen

Prof. Dr. Marie-Claire Foblets,

MPI für ethnologische Forschung, Halle

Prof. Dr. Thomas Groß, Universität Osnabrück

Dr. Konstanze Jüngling,

Akademie der Diözese Rottenburg-Stuttgart

Prof. Dr. Winfried Kluth, Universität Halle-Wittenberg

Prof. Dr. Nora Markard, Universität Münster

Prof. Dr. Daniel Thym, Universität Konstanz

Prof. Dr. Mattias Wendel, Universität Leipzig

Volume 38

Daniel Thym | Odysseus Academic Network (Eds.)

Reforming the Common European Asylum System

Opportunities, Pitfalls, and Downsides of the
Commission Proposals for a New Pact on Migration and Asylum

Universität
Konstanz



Nomos

The book processing charge was funded by the Baden-Württemberg Ministry of Science, Research and Arts in the funding programme Open Access Publishing and the University of Konstanz.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

ISBN 978-3-8487-8725-8 (Print)
978-3-7489-3116-4 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-8725-8 (Print)
978-3-7489-3116-4 (ePDF)

Library of Congress Cataloging-in-Publication Data

Thym, Daniel | Odysseus Academic Network
Reforming the Common European Asylum System
Opportunities, Pitfalls, and Downsides of the Commission Proposals
for a New Pact on Migration and Asylum
Daniel Thym | Odysseus Academic Network (Eds.)
299 pp.

Includes bibliographic references.

ISBN 978-3-8487-8725-8 (Print)
978-3-7489-3116-4 (ePDF)

1st Edition 2022

© The Authors

Published by

Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden
www.nomos.de

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-8487-8725-8 (Print)
ISBN 978-3-7489-3116-4 (ePDF)
DOI <https://doi.org/10.5771/9783748931164>



Onlineversion
Nomos eLibrary



This work is licensed under the Creative Commons Attribution – ShareAlike 4.0 International License.

Preface

Reforming the Common European Asylum System was never supposed to be an easy task. Upon presenting the New Pact on Migration and Asylum, Commissioner Johansson famously predicted: ‘I will have zero Member States saying it’s a perfect proposal’, while expressing the hope that a ‘balanced’ proposal in terms of national interests might support a pragmatic approach: ‘let’s work on this’. So it happened, and yet there is no realistic prospect of adoption in the foreseeable future. Views among Member States seem to be almost irreconcilably juxtaposed on core questions. One factor causing difficulties during negotiations is the sheer complexity of the different proposals stretching over dozens of pages with hundreds of highly complex provisions. Debates are complicated further by uncertainties over the practical feasibility of the reform package. States at the Southern borders doubt that swift border procedures and effective returns could be delivered, and countries further North worry about secondary movements. Sceptical voices among non-governmental organisations go as far as saying that a continuation of the status quo would be better than a ‘bad’ reform.

The volume published by Nomos will provide readers with a timely, profound, and well-written collection of high-quality contributions by experts from across Europe. Contributions amalgamate an in-depth knowledge with a style of argument that addresses a broader audience: fellow academics, students and PhD researchers, practitioners, and political actors. Our ambition is to combine attention to the legislative detail with an awareness of the broader picture in terms of policy developments and practical implementation on the ground. Attention to implementation is of crucial relevance indeed, as indicated by the dire state of hotspots and asylum procedures at the external borders, the reality of secondary movements, and the absence of effective judicial oversight in some Member States. Besides practical feasibility, policy developments will take centre stage. Authors will move beyond the contents of the Commission proposals and inspect preliminary outcomes of the debate in the Council’s working groups, together with critical voices from stakeholders and academics. We can expect the book to remain relevant, since political agreement in Brussels on the core pieces of legislation appeared beyond reach at the time of writing.

Comments throughout this volume allow readers to identify pitfalls of European asylum law and policy, many of which are not intricately linked to the fate of the Commission proposals. They draw our attention to legal and practical challenges at the external borders and explore the normative framework in terms of secondary legislation and human rights compliance. Detention at the external borders, operational powers of the agencies, the pros and cons of mandatory relocation, the political context of cooperation with third states, factors influencing secondary movements, and the definition of reception conditions are among the elements of asylum policy, which are discussed in the different chapters and require our attention irrespective of the fate of the proposals put forward by the Commission in the autumn of 2020. In this respect, this volume is about the status quo as much as it is about future reform.

The book builds upon a series of blogposts which was published by the EU Immigration and Asylum Law Blog of the Odysseus Network in the months following the publication of the Pact.¹ The series proved successful and was consulted by tens of thousands of individual visitors. Building on the success of the series, the contributors to this volume have committed to a fundamental revision and update of their contributions to take on board the lessons learned over the past year and the state of play of the negotiations. The edited volume is not, in other words, a simple re-publication of the blog series but a fundamentally revised collection. Parallel publication of the print edition and an open access version is meant to support broad readership across Europe. A passionate debate among many contributors took place at a conference organised by the Odysseus Network in Brussels on 9/10 September 2021. Interns of the Odysseus Network, notably Marco Paron Trivellato, and assistants of my chair at the University of Konstanz, in particular Kilian Umbach, deserve credit for their valuable support. We are grateful to the University of Konstanz for having provided us with the funds to make our publication available by means of open access.

Asylum legislation and corresponding policy developments are certainly no pleasant object of analysis, and the multifaceted political, ethical, and legal dimensions of any debate forbid the use of rosy language such as ‘enjoy reading’. Nevertheless, we hope that you will benefit from the contributions, be it as a source of information about highly complex rules, be it as a source of inspiration about potential ways forward. Feel free

1 See <<https://eumigrationlawblog.eu/series-on-the-migration-pact-published-under-the-supervision-of-daniel-thym>> accessed 15 December 2021.

to contact the authors directly in case of comments; they will certainly appreciate your feedback.

Konstanz, 15 December 2021
Prof. Dr. Daniel Thym

Table of Contents

Never-Ending Story? Political Dynamics, Legislative Uncertainties, and Practical Drawbacks of the ‘New’ Pact on Migration and Asylum <i>Daniel Thym</i>	11
The New Pact on Migration and Asylum: What it is Not and What it Could Have Been <i>Philippe De Bruycker</i>	33
Into the Loop: The Doomed Reform of Dublin and Solidarity in the New Pact <i>Francesco Maiani</i>	43
Border Control and the Right to Liberty in the Pact: A False Promise of ‘Certainty, Clarity and Decent Conditions’? <i>Galina Cornelisse</i>	61
Pre-Screening at the Border in the Asylum and Migration Pact: A Paradigm Shift for Asylum, Return and Detention Policies? <i>Lyra Jakuleviciene</i>	81
Border Procedure on Asylum and Return: Closing the Control Gap by Restricting Access to Protection? <i>Jens Vedsted-Hansen</i>	99
The New Pact and EU Agencies: A Tale of Two Tracks of Administrative Integration and Unsatisfactory Embedding <i>Evangelia (Lilian) Tsourdi</i>	113
Secondary Movements: Improving Compliance and Building Trust among the Member States? <i>Daniel Thym</i>	129

Table of Contents

Immediate Protection in the New Pact on Migration and Asylum: A Viable Substitute for Temporary Protection? <i>Meltem Ineli-Ciger</i>	149
Towards a Thousand Little Morias: The EU (Non-)Rescue Scheme - Criminalising Solidarity, Structuralising Defection <i>Violeta Moreno-Lax</i>	161
The Future Architecture of the EU's Return System Following the Pact on Asylum and Migration: Added Value and Shortcomings <i>Madalina Moraru</i>	187
The Pitfalls of Migration Diplomacy: The EU Pact and Relations with Third Countries <i>Elsbeth Guild</i>	209
EU Cooperation with Third Countries within the New Pact on Migration and Asylum: New Instruments for a 'Change of Paradigm'? <i>Paula García Andrade</i>	223
Financial Aspects of the EU's New Pact on Migration and Asylum: Towards Stronger EU-Funded Policy Implementation? <i>Iris Goldner Lang</i>	239
Political Agreement on a Recast Asylum Reception Conditions Directive: Continuation of Tents, Containment and Discipline? <i>Lieneke Slingenber</i>	257
Labour Migration in the 'New Pact': Modesty or Unease in the Berlaymont? <i>Jean-Baptiste Farcy and Sylvie Sarolea</i>	277
Integration in the New Pact on Migration and Asylum: A Key Element of a Successful Migration Policy, but no EU Legislative Competence <i>Ulrike Brandl</i>	289