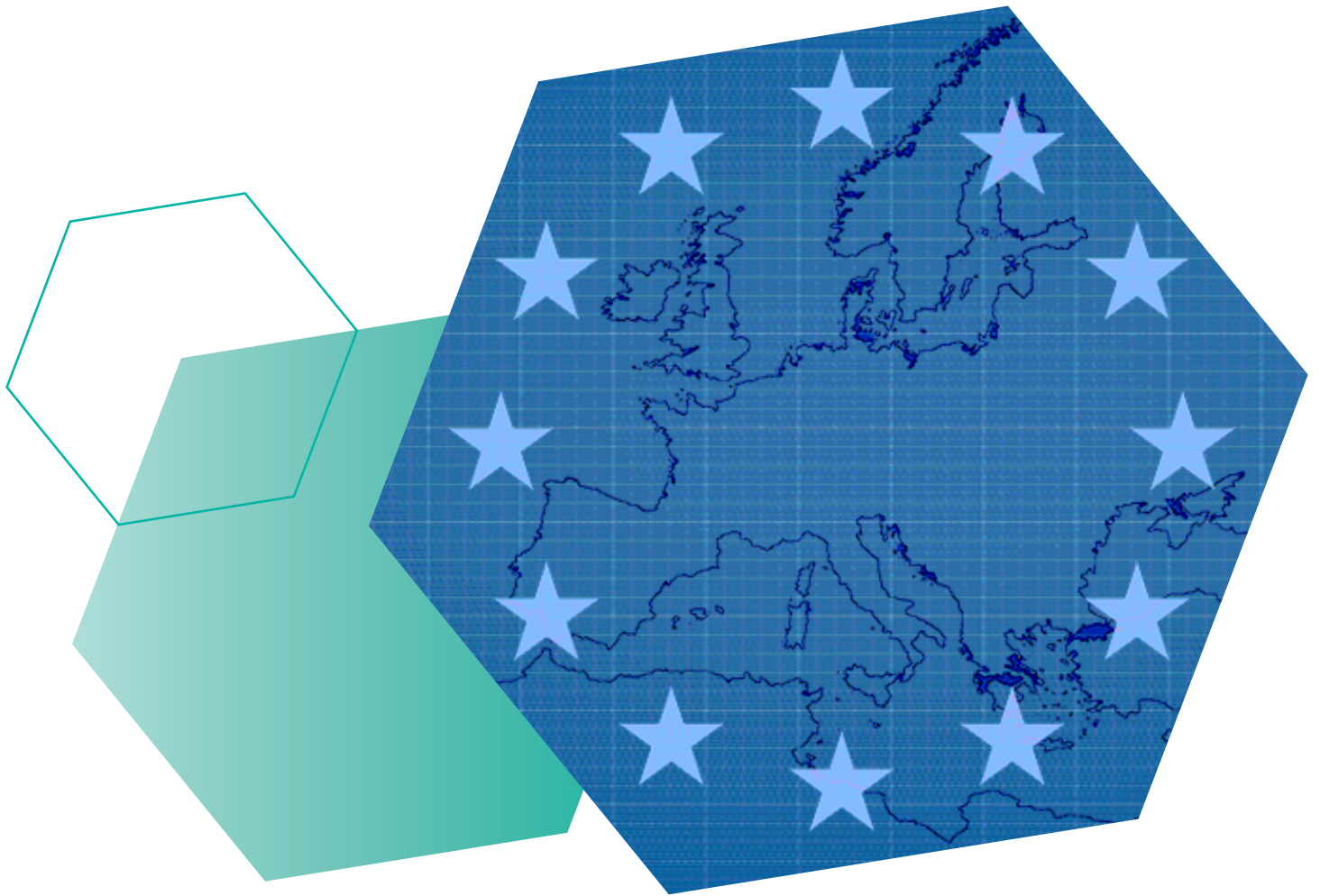




GLOBAL  
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# Leaning In? Ireland and the EU's New Pact on Migration and Asylum

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## Introduction

Although migration arguably has been displaced by the COVID-19 pandemic as the main item on the EU's political agenda over the last year and a half, it remains extremely salient for the Union, and particularly for those frontline Member States on the EU's external borders. Ireland is relatively removed from the main locus of EU migration in the Mediterranean, but as a country with a long and unique narrative of emigration and immigration, Ireland is well placed to contribute positively to this vital issue for the EU. Profound divisions within the Union have strained relations between Member States which were further exacerbated since by the migration crisis of 2015-2017. One function of efforts to forge a consensus on a new pact on migration and asylum is to rebuild the trust essential for the smooth functioning of the Union between Member States. Migration and asylum policy is a politically charged topic for certain Member States, and has led to complex debates in the EU over the definition of solidarity and responsibility between Member States and with regard to arrivals. The new EU Pact on Migration and Asylum Policy aims to resolve these differences and agree on a common EU approach to managing migration while respecting national policies regarding migration and asylum. Reaching an equitable and effective agreement on the future management of EU migration and asylum policy is in Ireland's own interest in terms of upholding the EU's political and economic cohesion and the EU's institutional decision-making capabilities.

This paper outlines the contents and context of the proposed New Pact on Migration and Asylum and reflects on how Ireland can best "lean-in" and engage further with migration and asylum policy.

## The EU's New Pact on Migration and Asylum

In September 2020, the European Commission presented its Communication on a New Pact on Migration and Asylum which aims to streamline EU migration policies into one coherent and integrated system to better coordinate internal and external policies. The Pact also aims to better coordinate and standardise both Union and Member State migration and asylum policies and complements the Member States' national competences in this area.

The Pact is primarily focused on support for asylum seekers, rather than economic or irregular migrants, and on encouraging solidarity and ensuring EU preparedness in the case of *force majeure* migration situations. It is strongly concerned with supporting successful asylum applicants in Europe and in improving procedures for effective and humane returns as well as strengthening EU external border security. The Pact represents a new departure in terms of focusing on the external aspects of migration and is comprised of three main elements: partnerships with third countries, external EU borders and internal EU rules, which are all underpinned by a foundation of Member State competence in border management, migration and asylum procedures. It is important to clarify in the discussions around the Pact the distinction between asylum seekers, who are seeking international protection and cannot be returned to their countries (until their applications for international protection have been processed) where they face serious threats to their life or freedom, and economic migrants who are not entitled to receive asylum protections.<sup>1</sup>

There are nine legislative proposals which comprise the Pact, Two are amendments to existing EU regulations, while seven are new proposals and a subsequent five are outstanding files which the Pact seeks to reach political agreement on at the Council of the EU and the European Parliament.

As indicated above, there are three main elements of the Pact, EU external partnerships, EU external borders, internal EU rules.

In terms of external relations, the New Migration and Asylum Pact seeks to improve coordination with third countries through mutually beneficial partnerships to address irregular migration, returns policies and border management. This effort would encompass EU policies, instruments and resources (i.e. development cooper-

1 <https://www.unhcr.org/3b66c2aa10>

ation, security, agriculture, visa, trade, investment and employment, environment and climate change, energy, and education). Efforts are being made in countries of origin to identify candidates for legal migration before their departure to lessen the administrative and political pressures on asylum procedures. Regular legal migration is to be encouraged through establishing Talent Partnerships<sup>2</sup> with third countries and the revised EU Blue Card Directive,<sup>3</sup> and to also address the EU's shrinking and aging population. The EU Blue Card scheme does not apply to Ireland or Denmark due to their Schengen Area and Justice & Home Affairs opt-outs.

The second layer is the management of EU external borders. The establishment of common EU asylum assessment criteria<sup>4</sup> and a new screening regulation<sup>5</sup> are intended to also accelerate and streamline the processing of third country arrivals at the EU's borders. The EU's new Schengen Strategy<sup>6</sup> aims to continue the expansion of a standing corps of EU border and coast guards (Frontex), border and migration system interoperability and digitisation of visa and travel documents, as well as greater police cooperation, a revised evaluation and monitoring mechanism and the expansion of the Schengen Area. A common voluntary EU returns and reintegration policy<sup>7</sup> in compliance with the EU Charter of Fundamental Rights as well as reinforcing the role of Frontex are also key to the Pact.

The issue of internal EU rules is framed in terms of the choice between mandatory and voluntary solidarity. The New Pact frames the discussion in terms of "responsibility" rather than "burden-sharing", and introduces a new "mandatory solidarity mechanism" whereby each Member State would have a degree of flexibility in terms of either contributing to relocation of refugees who are entitled to stay in the EU and/or financial support for processing, hosting or sponsoring the return of ineligible arrivals.<sup>8</sup> This demonstration of solidarity is in accordance with Article 80 TFEU<sup>9</sup> which offers Member States a choice in how they demonstrate solidarity, but not whether they do so or not. However, this would be supported by a proposed Crisis and Force Majeure Regulation<sup>10</sup> which would allow the solidarity mechanism to be strengthened in times of crisis. This force majeure regulation is undermined by the apparent ability of Member States to unilaterally declare the "impossibility of complying with certain Common European Asylum System (CEAS) rules, and thereby gain the right to temporarily suspend them".<sup>11</sup>

## Ireland's Positions on Migration and Asylum Policy

As indicated above, defining the terms of solidarity and responsibility for migration and asylum policy between Member States and towards arrivals will be central to discussions on the New Pact. A key element of this is the controversial issue of the possible replacement of the existing Dublin III Regulation which determines where asylum seekers are entitled to file their applications. Such a revision would amend the existing provision and allow asylum seekers to make applications in countries where there are existing migration networks and/or where they may have pre-existing family or employment connections. The degree of Europeanisation of EU external border management with Frontex and national border guard services is also a point of contention for certain countries.

2 [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_2921](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2921)

3 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0378>

4 [EUR-Lex - 52020PC0610 - EN - EUR-Lex \(europa.eu\)](#)

5 [EUR-Lex - 52020PC0612 - EN - EUR-Lex \(europa.eu\)](#)

6 [https://ec.europa.eu/home-affairs/sites/default/files/pdf/02062021\\_strategy\\_towards\\_fully\\_functioning\\_and\\_resilient\\_schengen\\_area\\_com-2021-277\\_en.pdf](https://ec.europa.eu/home-affairs/sites/default/files/pdf/02062021_strategy_towards_fully_functioning_and_resilient_schengen_area_com-2021-277_en.pdf)

7 [https://ec.europa.eu/home-affairs/sites/default/files/pdf/27042021-eu-strategy-voluntary-return-reintegration-com-2021-120\\_en.pdf](https://ec.europa.eu/home-affairs/sites/default/files/pdf/27042021-eu-strategy-voluntary-return-reintegration-com-2021-120_en.pdf)

8 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706)

9 [EUR-Lex - 12016E080 - EN - EUR-Lex \(europa.eu\)](#)

10 [EUR-Lex - 52020PC0613 - EN - EUR-Lex \(europa.eu\)](#)

11 <https://eumigrationlawblog.eu/a-fresh-start-or-one-more-clunker-dublin-and-solidarity-in-the-new-pact/>

EU Member States can be approximately identified and divided into three broad groups in terms of their positions on migration and asylum policy: **“Hardliners”** which strongly oppose mandatory solidarity and favour stronger border security procedures; **“Frontliners”** located immediately on the EU’s external borders which broadly favour mandatory solidarity in terms of migrant and refugee relocation as well as more robust border enforcement; and **“Mainstreamers”** which are generally more geographically removed from the EU’s immediate external borders and tend to emphasise human rights provisions for migration and asylum procedures and are broadly split over mandatory migrant relocation measures.

Hardliners	Frontliners	Mainstreamers
Austria, Czech Republic, Denmark, Hungary, Poland, Slovakia, Slovenia	Bulgaria, Croatia, Cyprus, Greece, Italy, Latvia, Lithuania, Malta, Romania, Spain	Belgium, Estonia, Finland, France, Germany, Ireland, Luxembourg, Netherlands, Portugal, Sweden

Ireland fits broadly within the “Mainstreamers” group, as it has called for clear solidarity and forging compromise and solidarity with Frontline Member States, and the need for a humane and effective migration and asylum policy.<sup>12</sup> Resettlement efforts and increased legal pathways for migration; addressing root causes of migration and reforming the Common European Asylum System are all important for Ireland on migration and asylum policy. As a non-permanent UN Security Council member, Ireland is keen on highlighting the global plight of refugees at the UN and other relevant fora, and has a long-history of demonstrating its support for migrants through Irish Aid efforts for refugees globally.<sup>13</sup> Ireland also has a considerable history of migration, both in terms of mass emigration and more recent immigration with a considerable economic “brain-gain” in the form of returning migrants bringing their skills, contacts and experiences back to Ireland.<sup>14</sup>

While the refugee situation does not directly pertain to the UN Security Council agenda, Ireland has consistently highlighted humanitarian and human rights issues and the plight of refugees globally through the UN’s structures and in other multilateral formats. Forging external partnerships with third countries to address the root causes of migration has been a long-standing priority of Irish humanitarian aid. In terms of strengthening the EU’s external borders, Ireland has sounded a more cautious note, and has emphasised the need to ensure human rights are respected in border management procedures and to avoid inhumane treatment of migrants.<sup>15</sup> Ireland’s responsibility towards migrants and migration is well demonstrated by considerable Irish Aid humanitarian support to refugees in Syria, Lebanon and Jordan. The solidarity shown by Ireland to date regarding migrant relocation has focused on unaccompanied minors and family groups. Ireland has focused on rescues of migrants at sea in dangerous crafts, voluntarily taking in refugees<sup>16</sup> and, also aiding third countries in migrant reception management through Irish Aid.<sup>17</sup> Ireland was also the first country to respond to Italy’s request to accept refugees as a “voluntary gesture of solidarity”.<sup>18</sup>

12 <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2020/september/statement-by-minister-for-european-affairs-byrne-on-the-eu-commissions-new-pact-on-migration.php>

13 <https://www.oireachtas.ie/en/debates/question/2021-05-12/136/?highlight%5B0%5D=unaccompanied-&highlight%5B1%5D=minors&highlight%5B2%5D=minors&highlight%5B3%5D=unaccompanied&highlight%5B4%5D=minors>

14 <https://www.irishtimes.com/business/economy/migration-has-been-a-brain-gain-for-ireland-in-recent-decades-1.4401340>

15 <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2020/september/statement-by-minister-for-european-affairs-byrne-on-the-eu-commissions-new-pact-on-migration.php>

16 [https://ireland.representation.ec.europa.eu/strategy-and-priorities/key-eu-policies-ireland/eu-migration-policy-and-ireland\\_en](https://ireland.representation.ec.europa.eu/strategy-and-priorities/key-eu-policies-ireland/eu-migration-policy-and-ireland_en)

17 <https://www.oireachtas.ie/en/debates/question/2021-05-12/136/?highlight%5B0%5D=unaccompanied-&highlight%5B1%5D=minors&highlight%5B2%5D=minors&highlight%5B3%5D=unaccompanied&highlight%5B4%5D=minors>

18 <https://www.infomigrants.net/en/post/32304/ireland-to-take-10-migrants-from-italy-in-solidarity>

## Opportunities for Ireland to “Lean-In” More and Engage with Migration and Asylum Policy

The discourse in the European debate on migration and asylum policy is increasingly framed in terms of “responsibility”, both towards arrivals and towards fellow Member States, rather than “burden-sharing”. This is a position which Ireland clearly demonstrates in its humanitarian approach at the UN, the EU and through Irish Aid. Ireland also has a generally positive stance towards management of migration and frames its approach to the issue in terms of human rights provisions. Although the EU’s New Pact of Migration and Asylum presents a comprehensive approach, it has been criticised for failing to sufficiently take into account the international refugee protection dimensions of the UN Global Compact on Refugees (GCR).<sup>19</sup> Ireland was deeply involved in drafting the GCR, Ireland could make a positive contribution to EU level discussions to emphasise the need for credible international protection commitments for refugees. As a non-permanent member of the UNSC, Ireland could utilise its position to take a proactive stance on migration and asylum reform and to highlight the need for human rights provisions as part of humane and effective procedures.

### What can Ireland do in terms of demonstrating solidarity?

The EU’s New Pact is being negotiated currently as a “package deal”, and while it is a welcome reform, it may not receive sufficient support to be adopted in its entirety.

If Ireland were to act as an honest broker between the Frontline and Hardline groupings who are averse to certain provisions in the Pact, it could encourage them to support it as a whole. The Irish Government has clearly stated its support for greater responsibility and solidarity among Member States.<sup>20</sup> Maintaining the concept of flexible mandatory solidarity (as noted in Art. 80 TFEU), but expanding it to include support for returns with improved reception conditions, contributing expertise and administrative support to them,<sup>21</sup> would provide Ireland with an opportunity to visibly demonstrate its support for other Member States. The precise legal definition of solidarity is still undefined, and the use of Art. 80 TFEU is disputed by a number of Member States as a legitimate legal basis.<sup>22</sup> They prefer the notion of sincere cooperation which obliges Member States to help one another to fulfil obligations arising from the EU Treaties and abstain from measures which may interfere with them as laid out in Art. 4(3) TEU.<sup>23</sup> Ireland could support attempts to move beyond a state-centric and exclusionary concept of solidarity towards a more expansive understanding of solidarity based on responsibility towards individuals and encompassing their human rights and freedoms.<sup>24</sup>

### What support could Ireland offer in terms of border management and screening?

Ireland can also offer support to frontline Member States in terms of border management and screening by framing its contributions in terms of humanitarian, governance and political support.<sup>25</sup>

First by providing humanitarian care and assistance for arrivals and refugees by seconding Irish staff and supporting Irish NGOs to manage reception centres, and by ensuring the conditions and asylum procedures and standards are effectively monitored and implemented. Humanitarian protection involves ensuring that migrants do not merely survive, but that they are able to thrive as autonomous individuals.<sup>26</sup> Ireland can also

19 <https://op.europa.eu/en/publication-detail/-/publication/d57fbff0-a312-11eb-9585-01aa75ed71a1> p.125

20 <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2020/september/statement-by-minister-for-european-affairs-byrne-on-the-eu-commissions-new-pact-on-migration.php>

21 <https://eumigrationlawblog.eu/the-new-pact-on-migration-and-asylum-what-it-is-not-and-what-it-could-have-been/>

22 <https://data.consilium.europa.eu/doc/document/ST-8256-2014-ADD-1/en/pdf>

23 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012M004>

24 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0411>

25 <https://www.e-ir.info/2015/11/01/interview-nando-sigona/>

26 <https://blogs.lse.ac.uk/europpblog/2013/10/14/the-death-of-migrants-in-the-mediterranean-is-a-truly-european->

champion the meaningful incorporation and exercise of human rights conditions for border management and screening, particularly in the case of unaccompanied minors and children.<sup>27</sup> The provision of humanitarian visas could also be explored.

Second, Ireland could offer governance support in terms of facilitating the administrative processing, hosting, relocation and returns of unsuccessful arrivals though financial support as well as manpower and expertise. As a result of Ireland being outside the Schengen Zone, it is not bound by the Schengen Acquis nor subject to Regulation 2019/1896, (Preamble Clause 127),<sup>28</sup> establishing the European Border and Coast Guard Agency (Frontex). Ireland can however contribute expertise (in terms of staffing and advice) and facilities to other Member States within the framework of Frontex on a case-by-case basis (Preamble Clause 128), which could enable Ireland to selectively lean-in and contribute to specific programmes or operations.

Third, Ireland could leverage its political capital and non-colonial credentials to support an equitable solution between different Member States and countries of origin for migrants. As an EU representative, Ireland could assist in forging agreements to address some of the root causes of migration, such as conflict or economic underdevelopment, and to facilitate the smooth processing of returns. Ireland's high international profile on the UN Security Council and demonstrable commitment to issues of climate change, hunger and conflict, key drivers of migration,<sup>29</sup> and its own history of migration make it eminently suited to play this role. Ireland can also ensure that the New Pact is not merely conceived as a regional issue, but that it meaningfully engages with the UN Global Compact for Migration and migration as a global concern.

## What are the implications for Ireland outside of the Schengen Zone (and in the CTA)?

The migration crisis undermined the coherence and effectiveness of the Schengen Zone, which abolished passport and visa controls at internal EU borders, by reintroducing internal EU border checks during the 2015-2017 migration crisis,<sup>30</sup> and has been further exacerbated by COVID-19 related border restrictions. While the challenges to Schengen may be of limited immediate relevance to Ireland, as a non-member of Schengen, it may undermine the political and economic cohesion of the Union. This is particularly the case in relation to the free cross-border movement of goods and people, which was central to the Brexit negotiations with the UK in relation to Northern Ireland<sup>31</sup> and is unlikely to be altered in the short- to medium-term.

It should be noted that Ireland's non-membership of Schengen is based on the political priority attached to preserving the Common Travel Area (CTA) with the UK and key elements of the Good Friday Agreement (GFA). This commitment to the CTA is the key determinant of the potential limits of Irish cooperation with the Schengen system. Ireland's CTA arrangement with the UK allows citizens of both jurisdictions to move freely and reside in each other's territory, based on bilateral agreements which precede EU Membership and are not dependent upon EU membership. There is a provision in the Northern Ireland Protocol which endorses the ability of Ireland and the UK to make agreements between themselves regarding the free movement of persons and the CTA predates its membership of the EU and is not dependant on it.

Within the EU, Cyprus, Croatia, Romania and Bulgaria are currently not members of Schengen, they all bar Cyprus already apply much of the Schengen acquis, and have all applied to join.<sup>32</sup> Although Ireland has already opted-in to some aspects of Schengen, such as the Schengen Information System (SIS), Ireland's Schengen opt-out could arguably limit its ability to exercise its influence on related issues, although it remains under constant review. The key issue for Ireland is how far it can go in acknowledging Schengen and the New Pact while

27 <https://www.e-ir.info/2021/05/30/rejected-asylum-claims-and-children-in-international-human-rights-law/>

28 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1573722151667&uri=CELEX:32019R1896>

29 <https://www.csis.org/analysis/five-ways-covid-19-changing-global-migration>

30 <https://geopolitique.eu/en/2021/06/28/openness-versus-helplessness-europes-2015-2017-border-crisis/>

31 <https://geopolitique.eu/en/2021/06/28/openness-versus-helplessness-europes-2015-2017-border-crisis>

32 <https://www.schengenvisainfo.com/news/eu-cyprus-not-ready-to-join-schengen-zone/>

recognising the priority it attaches to the CTA for historical and political reasons.

## Conclusion

Migration and asylum policy will continue to play a key role in influencing the future shape and trajectory of the EU, and achieving an equitable and balanced agreement with addresses concerns over solidarity, responsibility and upholding humanitarian values will be essential in ensuring the future of the Union. Ireland as a country relatively removed from the main migration pathways of the Union, but which has a rich and extensive history of migration is well placed to play a meaningful role in this debate and to contribute to maintaining the EU's political, economic and institutional cohesion.



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