



CALL FOR PAPERS:  
“INSTRUMENTALISATION OF MIGRANTS,  
SANCTIONS TACKLING HYBRID ATTACKS  
AND SCHENGEN REFORM  
IN THE SHADOWS OF THE PACT”  
(SPECIAL FOCUS)

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As the “new” Pact on Migration and Asylum<sup>1</sup> remains deadlocked, the Commission’s last attempt to cope with the refugee and migration crisis at Europe’s borders is running on a twin track. On the one hand, this involves temporary measures pursuant to art. 78(3) TFEU to assist Poland, Lithuania and Latvia in managing the emergency at the Belarusian border.<sup>2</sup> On the other, it promotes a structural reform of the Schengen Border Code, which appears to be aimed at re-establishing mutual trust in intra-Schengen co-operation at the internal borders through a twofold approach: by ensuring the swift transfer of migrants apprehended at the internal borders while expanding Member

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<sup>1</sup> Communication COM(2020) 609 final from the Commission of 23 September 2020 on a New Pact on Migration and Asylum.

<sup>2</sup> Proposal for a Council Decision on provisional emergency measures for the benefit of Latvia, Lithuania and Poland of 1 December 2021.



States' discretion to prolong internal border controls in response to persistent threats.<sup>3</sup> The cutting edge of the proposed reform is an emergency mechanism applicable in exceptional situations of "instrumentalisation of migrants" by third countries,<sup>4</sup> complemented by new measures to respond to epidemic situations.<sup>5</sup>

These proposals are coupled with the strengthening of sanctions against Belarus for its continued human rights abuses through the adoption of the fifth package of restrictive measures,<sup>6</sup> widening the number of targeted individuals and entities (including leading representatives of the Lukashenko regime). At the same time, the fifth package seems to pave the way for categorising the European response to the s.c. "instrumentalisation" under the Common Security and Defence Policy, thus completing the trend towards shifting to third countries the European responsibility for migration (mis)management by qualifying the border crisis as a "hybrid attack".<sup>7</sup>

Overall, the Commission's initiatives encompass a heterogeneous set of legal, operational and financial emergency measures, which are presented as an adaptation of EU migration policy to the changing migratory landscape of the European borders. However, their envisaged scope and interaction reveal a political attempt to redesign surreptitiously the entire governance of human mobility across and within European borders, promoting institutional changes based on a rising intergovernmentalism.<sup>8</sup>

In this rapidly evolving scenario, a series of pivotal and increasingly pressing questions comes to the fore, requiring more in-depth scholarly analysis.

Is the European response to the crisis at the Eastern European borders prompting a systemic paradigm shift? If so, what are the core features of the emerging regime from a legal, political and operational standpoint? How and to what extent will this emergency reaction impact the progress of the negotiations of the Pact?

<sup>3</sup> Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders of 14 December 2021, arts 23a to 27a. The scope of Member States' discretion to reintroduce or prolong internal border controls in response to "new" or "renewed" threat is under scrutiny before the CJEU in Joined Cases C-368/20 and C-369/20 *Landespolizeidirektion Steiermark*, on which see the opinion of AG Saugmandsgaard Øe, ECLI:EU:C:2021:821.

<sup>4</sup> Proposal for a Regulation amending Regulation (EU) 2016/399 cit., arts 2, 5, 13 and 28.

<sup>5</sup> *Ibid.*, art. 21a.

<sup>6</sup> Council Implementing Regulation (EU) 2021/2124 of 2 December 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; Council Implementing Decision (CFSP) 2021/2125 of 2 December 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus.

<sup>7</sup> European Council Conclusions of 21 and 22 October 2021, para. 19.

<sup>8</sup> On the proposal from the French Presidency of the Council to create a new "Schengen Council" which should bring together the ministers of the Schengen Area countries, see S Corbet, 'Macron takes aim at migration with eye on French election' (2 February 2022) AP News.

Does the case law of the Luxembourg<sup>9</sup> and Strasbourg<sup>10</sup> Courts on the rule of law at the EU's external borders represent the last bulwark before “border violence and deniability”<sup>11</sup> become the “new normal”?

Building on the contingent situation and on these key questions, the *Special Focus* aims to foster debate and to highlight the theoretical and practical implications of a crucial move towards the future of the Area of Freedom, Security and Justice. Therefore, it welcomes spontaneous contributions on a series of closely intertwined research trajectories, including the following:

i) the illustration and discussion of the proposed measures and the appraisal of their (potential) long-term impact on the basic premises of the Area of Freedom, Security and Justice, on the functioning of the internal and external dimensions of Schengen, as well as on the restoration of the Common European Asylum System;

ii) the assessment of the proposed measure in the broader context of the EU's external action, having due regard (*inter alia*) to the use and rationale of EU sanctions for migration management purposes and to their impact on the overall consistency and effectiveness of EU foreign and neighbourhood policies;

iii) the analysis of the potential interaction between the proposed measures and the various texts composing the 2020 Pact on Migration and Asylum, notably the Regulation on Asylum and Migration Management (ex-Dublin Regulation),<sup>12</sup> the Regulation on Asylum and Return Procedures<sup>13</sup> and the Regulation addressing situations of Crisis and Force Majeure.<sup>14</sup> Contributions focusing on these aspects should address if and how

<sup>9</sup> Case C-821/19 *Commission v Hungary (Incrimination de l'aide aux demandeurs d'asile)* ECLI:EU:C:2021:930; Case C-36/20 PPU *Ministerio Fiscal (Authority likely to receive an application for international protection)* ECLI:EU:C:2020:495; Case C-808/18 *Commission v Hungary (Reception of applicants for international protection)* ECLI:EU:C:2020:1029; Case C-564/18 *Bevándorlási és Menekültügyi Hivatal (Tompá)* ECLI:EU:C:2020:218; Joint Cases C-924/19 PPU and C-925/19 PPU *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* ECLI:EU:C:2020:367.

<sup>10</sup> ECtHR *M.H. a.o. v Croatia* App. n. 15670/18 [18 November 2021]; *M.K. a.o. v Poland* App. nos 40503/17, 42902/17, 43643/17 [23 July 2020]; *Z.A. a.o. v Russia* App. nos 61411/15, 61420/15, 61427/15 and 3028/16 [21 November 2019]; but see also *Ilias and Ahmed v Hungary* App. no. 47287/15 [21 November 2019]. Concerning the situation at the borders with Belarus, the ECtHR issued several interim measures, mostly for asylum seekers who claimed the risk of abusive push-backs from the Polish territory. See Press Release ECHR 372 (2021) of 6 December 2021.

<sup>11</sup> E Kuskonmaz, E Guild, 'Deniability? Frontex and Border Violence in the EU' (19 January 2022) RLI Blog on Refugee Law and Forced Migration rli.blogs.sas.ac.uk.

<sup>12</sup> Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] of 23 September 2020.

<sup>13</sup> Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU of 23 September 2020.

<sup>14</sup> Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum of 23 September 2020.

the Commission's recent initiatives may foster or further complicate the already troubled advancement of negotiations on the Pact;

iv) the interplay between the proposed measures and the enhanced role played by EU agencies at the external borders, especially in light of the recent investigations on Frontex's involvement in illegal returns,<sup>15</sup> the transformation of EASO into the new European Union Asylum Agency<sup>16</sup> and the draft inter-institutional agreement reached by the co-legislators on Europol's new mandate.<sup>17</sup>

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The **deadline** for the submission of an initial set of contributions – in the forms of *Highlights* or *Insights* – is **31 March 2022**. However, in order to stimulate debate among academics and researchers, the *Special Focus* will be open to additional works even after the expiry of this deadline, provided that they focus on the challenges described above or on other topical issues connected to them.

Spontaneous contributions can be submitted to **submission@europeanpapers.eu** and must comply with the European Papers' **guidelines** (available [here](#)). Please note that the *European Forum* is multilingual, receiving contributions in English, French, Italian and Spanish.

<sup>15</sup> Case T-282/21 *SS and ST v Frontex* (action brought on 21 May 2021).

<sup>16</sup> Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010.

<sup>17</sup> European Council Press Release 68/22 of 1 February 2022, Europol: provisional agreement between the Council presidency and the European Parliament on the agency's new mandate, referring to the Commission's proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation of 9 December 2020. For an appraisal of the proposed reform, see European Data Protection Supervisor, Remarks at the LIBE Committee on Europol, 1 February 2022.