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## **“Emerging ‘Externalisation’ Dimension of the EU Migration Policy and its Reflection on the New Pact on Migration and Asylum: Analysis from the Perspective of Civil Society Organisations”**

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**Olomouc, 26.07.2022**

A handwritten signature in blue ink, appearing to read "Abdukhaliyov Farrukh".

# Contents

DECLARATION	III
ACKNOWLEDGEMENTS	IV
ABSTRACT	V
<b>CHAPTER 1. INTRODUCTION</b>	<b>1</b>
1.1 BACKGROUND TO THE RESEARCH	2
1.2 RESEARCH PROBLEM	5
1.3 RESEARCH AIM AND QUESTION	6
1.4 DEFINITION OF TERMS	6
1.5 SCOPE AND SIGNIFICANCE	9
1.6 STRUCTURAL OUTLINE	9
<b>CHAPTER 2. LITERATURE REVIEW</b>	<b>11</b>
2.1 HISTORICAL BACKGROUND	12
2.2 CONTEMPORARY CONTEXT	16
2.3 PREVIOUS RESEARCH AND LIMITATIONS	20
<b>CHAPTER 3. METHODOLOGY</b>	<b>23</b>
3.1 RESEARCH DESIGN	24
3.1.1 <i>Research Philosophy</i>	24
3.1.2 <i>Research Type</i>	25
3.1.3 <i>Research Strategy</i>	25
3.1.4 <i>Data Collection Method</i>	26
3.1.5 <i>Data Analysis Method</i>	28
3.2 THEORETICAL FRAMEWORK	28
3.3 METHODOLOGICAL LIMITATIONS	32
<b>CHAPTER 4. EXTERNALISATION DIMENSION OF THE EU MIGRATION POLICY AND CSO</b>	<b>33</b>
4.1 EMERGENCE AND DEVELOPMENT OF THE EU EXTERNALISATION POLICY	34
4.1.1 <i>Emergence of the Legal and Institutional Framework of Externalisation</i>	35
4.1.2 <i>Emergence of the General Frame in External Action</i>	37
4.1.3 <i>From the State of Exception to the New Normal</i>	40
4.2 THE NEW PACT – COMPLEX EXTERNAL MIGRATION FRAMEWORK	45
4.2.1 <i>Deepening Partnerships with Key Countries of Origin and Transit</i>	47
4.3 ANALYSIS FROM THE PERSPECTIVE OF CIVIL SOCIETY ORGANISATIONS	50
4.3.1 <i>Reflections of CSOs to Externalisation in the New Pact</i>	52
4.3.2 <i>Policy Recommendations by CSOs</i>	55
4.4 FUTURE OF THE EU EXTERNALISATION POLICY	59
<b>CHAPTER 5. CONCLUSION</b>	<b>61</b>
5.1 CONTRIBUTION	63
5.2 LIMITATIONS	63
5.3 FURTHER RESEARCH	64
<b>BIBLIOGRAPHY</b>	<b>65</b>

## Declaration

I, Farrukh Abdukhalilov hereby declare that this thesis, entitled **“Emerging ‘Externalisation’ Dimension of the EU Migration Policy and its Reflection on the New Pact on Migration and Asylum: Analysis from the Perspective of Civil Society Organisations”**, submitted as partial requirement for the MA Programme Euroculture, is my own original work and expressed in my own words. Any use made within this text of works of other authors in any form (e.g., ideas, figures, texts, tables, etc.) are properly acknowledged in the text as well as in the bibliography.

I declare that the written (printed and bound) and the electronic copy of the submitted MA thesis are identical.

I hereby also acknowledge that I was informed about the regulations pertaining to the assessment of the MA thesis Euroculture and about the general completion rules for the Master of Arts Programme Euroculture.

Signed



Date

26.07.2022

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## **Abstract**

Statement about the New Pact on Migration and Asylum by the European Commission being as “a fresh start for migration”<sup>1</sup> has drawn attention of several types of migration stakeholders, including civil society organisations operating at the European level which are directly involved in migration-related affairs and observe the policy implementation and accountability in practice. Considering that, the research aims to explore the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum from the perspective of the European-level Civil Society Organisations. Therefore, the research question is the following: *how do the European-level CSOs working in the field of migration and asylum evaluate the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum?*

Precisely, the thesis explores the evaluation of the externalisation and its patterns of development in the New Pact on Migration and Asylum. This helps the research to understand the origins of the externalisation phenomenon in the European Union migration management framework and analyse it relying on the proposals of the civil society organisations that critically frame and assess the New Pact on Migration and Asylum.

Implementation of the “failing forward” and path dependence theory frameworks contributes to the facilitation of the analysis. Taking into consideration the dynamic nature of migration and migration related strategies, the present research faces challenges when it comes to backing up the arguments academically concerning the New Pact on Migration and Asylum. However, the thesis is expected to contribute to general knowledge, despite the methodological and academic limitations.

**Keywords:** New Pact on Migration and Asylum, civil society organisations, European Union migration policy, externalisation policy, migration management, path dependence.

**Word Count:** 20 315

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<sup>1</sup> ‘A Fresh Start on Migration: Building Confidence and Striking a New Balance between Responsibility and Solidarity’, European Commission, 23 September 2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1706).

# Chapter 1.

## INTRODUCTION

Migration management in the European Union policy is a complex matter with numerous aspects that must be taken into consideration like the safety of people who are seeking protection or a better life, as well as the problems of the European Union Member States on the frontlines which are concerned that their capacity will be under pressure due to the illegal migration and require solidarity from other Member States. On the other hand, the rest of the European Union Member States are concerned about security of the external borders and understand that if necessary measures are not implemented, their own national asylum, integration, and return systems will be incompetent to handle the case of massive influx.<sup>2</sup>

The complicated nature of migration has always gridlocked the European Union policy-makers on what approaches to create and deploy that effectively work in these situations. The present trend of rising irregular migration and asylum-seekers across the Mediterranean Sea has caused significant financial, social, and political complications for the European Union Member States and has led to work out a comprehensive strategy narrowly focused on migration management.

So, this research aims to explore the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum from the perspective of the European-level Civil Society Organisations. Therefore, the research question is the following: *how do the European-level CSOs working in the field of migration and asylum evaluate the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum?*

The chapter provides an introduction to the research by first discussing the background and context, followed by the research problem, aim, question and objectives. The chapter also presents the definition of terms, scope and significance of the research and structural outline of the thesis.

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<sup>2</sup> ‘New Pact on Migration and Asylum’, European Commission, 23 September 2020, [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en).

## 1.1 Background to the Research

The externalisation dimension of the European Union migration management is not a new phenomenon. The official institutional milestone of this practice was established in Tampere Summit in 1999 which advocated “the need to develop a common policy for the European Union regarding questions, which are distinct, but closely related to asylum and immigration.”<sup>3</sup> The Presidency Conclusions also contained the necessity for “close cooperation with the countries of origin and transit.”<sup>4</sup> One of the key motivations for such a discourse was the formation of Schengen zone in 1995 that established free movement of people and goods eliminating internal borders.

Stable implementation of the common area required the European Union to consolidate its external borders and cooperate with the migrants sending countries as well as transit ones. On the one hand, the European Union implemented preventive measures to tackle the root causes of migration by launching development aids, creating jobs and opportunities for the potential migrants in their home countries. On the other hand, security measures were enforced to reduce unlawful border crossings blended with the increasing border controls which developed the instruments of deterrence.<sup>5</sup> Externalisation dimension of the migration management gradually became a main concern and the refugee crisis in 2015 has speeded up this procedure. The crisis contributed to the “normalisation” of the differentiated externalisation in the European Union agenda. This was echoed in the recently announced New Pact on Migration and Asylum<sup>6</sup> which further expanded the externalisation dimension of the European Union migration management.

The research focuses on the proposals of the CSOs on the New Pact on Migration and Asylum and explores how the European Union introduced more sophisticated externalisation instruments. Following the surge in illegal border crossings and human losses along the way in the Mediterranean Sea in 2015<sup>7</sup>, in addition to increasing resources for the FRONTEX operations, the European Union had to expand cooperation with third countries in migration

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<sup>3</sup> ‘Presidency Conclusions’ (Tampere European Council, 16 October 1999), [https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm).

<sup>4</sup> Ibid.

<sup>5</sup> Victoire d’Humières, ‘European Union/African Cooperation: The Externalisation of Europe’s Migration Policies’, Robert Schuman Foundation, 30 April 2018, <https://www.robert-schuman.eu/en/european-issues/0472-european-union-african-cooperation-the-externalisation-of-europe-s-migration-policies>.

<sup>6</sup> European Commission, ‘Communication from the Commission on a New Pact on Migration and Asylum’, COM(2020) 609 final (2020), 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A609%3AFIN>.

<sup>7</sup> ‘IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015’, International Organization for Migration, 5 January 2016, <https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

management, particularly with Turkey considering the situation in Syria. Much discussed EU-Turkey joint action plan aimed to “accelerate procedures in order to smoothly readmit irregular migrants who are not in need of international protection [...] in line with the established bilateral readmission provisions.”<sup>8</sup>

The New Pact on Migration and Asylum was announced by the European Commission on September 23, 2020.<sup>9</sup> As the European Commission underlines the New Pact on Migration and Asylum introduces a reform agenda designed to establish a new comprehensive and long-term migration management strategy. The New Pact takes into consideration the key challenges that the European Union is facing in the field of migration and asylum as well as the ever-changing attributes of the current migration situations. Overall, the European Commission proposes a fresh start on migration management based on a general assessment: forming assurance among Member States through more effective practices and establishing a new balance between solidarity and responsibility. The Commission highlights the importance of a combined strategy that brings together policies on migration, asylum, and border management.<sup>10</sup>

According to the Commission, the 2015 European refugee crisis revealed the fundamental problems of the European Union migration and asylum policies along with the problematic situations where various Member States were impacted in different ways. Furthermore, the emergency responses in times of crises, particularly solidarity and responsibility-sharing, turn out to be fragile and malfunctioning.<sup>11</sup> In the light of these events, the New Pact seeks to create a unified European framework, improve refugee and migration management, and develop a new solidarity structure capable of handling problems in both everyday circumstances as well as under pressure and in times of crisis. Along with ensuring a common standard of reception conditions among Member States, it also aims to increase the uniformity and effectiveness of asylum and return procedures at the border.

The main objectives of the New Pact is to create faster, more harmonious migration processes and better migration and border administration supported by the latest IT systems and

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<sup>8</sup> European Commission, ‘EU-Turkey Joint Action Plan’, 15 October 2015, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_15\\_5860](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5860).

<sup>9</sup> Anja Radjenovic, ‘A New Pact on Asylum and Migration and Accompanying Legal Proposals (Articles 78 and 79 TFEU)’, European Parliament, 20 May 2022, <https://www.europarl.europa.eu/legislative-train/theme-promoting-our-european-way-of-life/file-a-new-pact-on-migration-and-asylum>.

<sup>10</sup> European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum’, COM/2020/609 final (2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A609%3AFIN>.

<sup>11</sup> Ibid.

operational agencies. Integrated border management is presented as a crucial element of a comprehensive migration policy and as a precondition for productive asylum and readmission policies. The New Pact also promotes the reduction of life-threatening irregular entries in favour of sustainable and safe legal paths for the persons who are in need of urgent protection.<sup>12</sup> Based on those objectives, the New Pact clearly emphasises the significance of the partnership with third countries in migration management. Therefore, the New Pact proposes creating balanced and tailored partnerships with third countries to deal with the root causes of irregular migration, and encourage legal migration, as well as formal readmission agreements to boost return rates.<sup>13</sup>

However, the New Pact on Migration and Asylum has been extensively discussed by many local and international organisations operating in different spheres of migration including the European-level CSOs. So, it is crucial to define their significance because the present study mostly relies on the proposals of the European-level CSOs. In order to bridge the gap between the state and society and to strengthen the legitimacy of policy, the European Union has emphasised the importance of CSOs in setting the agenda and carrying out migration policies. The significance of CSOs in the European Union's good governance is acknowledged in Article 15 of the Treaty on the Functioning of the European Union.<sup>14</sup> The article 11 of the Treaty on European Union stresses their significance for the Union to have "an open, transparent and regular dialogue with representative associations and civil society organisations" when formulating proposals for the European Union laws.<sup>15</sup>

Moreover, CSOs can monitor policies and offer input as they have greater in-depth knowledge of the needs and conditions of migrants and asylum seekers because they work with them directly on the ground. Additionally, these procedures enable CSOs to examine policy accountability of governments which strengthens their political legitimacy. Overall, these distinctive characteristics assist the research in comparing and contrasting the proposals on the New Pact on Migration and Asylum made by various European-level CSOs. For instance, in a released position paper by Caritas Europa, they criticised the continuation of a practice that placed a higher priority on return and migration prevention by cooperating more closely with

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> 'Consolidated Version of Treaty on the Functioning of the European Union', *Official Journal of the European Union* 55, no. C 326 (26 October 2012): 54, [https://doi.org/10.3000/1977091X.C\\_2012.326.eng](https://doi.org/10.3000/1977091X.C_2012.326.eng).

<sup>15</sup> 'Consolidated Version of the Treaty on European Union', *Official Journal of the European Union* 55, no. C 326 (26 October 2012): 21, [https://doi.org/10.3000/1977091X.C\\_2012.326.eng](https://doi.org/10.3000/1977091X.C_2012.326.eng).

countries of origin and transit rather than promoting mobility. The position paper also raises concerns over the conditions of the New Pact to boost fast-track border checks which, in practice, could endanger the migrants and refugees' human rights in the flashpoints like Italy and the Greek islands.<sup>16</sup>

This is what the organised hypocrisy framework refers to as a division between what the European Union claims to be doing – its indicated objectives and goals (the protective *acquis*) – and what it actually does (preventive approach that limits access to protection). To a notable degree, “‘hypocrisy’ is the result of complex organisations’ struggle to uphold expected norms and values on the one hand while responding to the priorities and contingencies expressed by their technical environment.”<sup>17</sup> Incoherent performance and a sense of hypocrisy emerge from attempting to meet conflicting mandates instead of leaving them. This phenomenon is described more in the literature review chapter of the thesis within the framework of ‘failing forward’.

## **1.2 Research Problem**

The management of migration in the European Union policy is a complicated issue with many factors that must be taken into account, such as the safety of those seeking protection or a better life as well as the issues facing the European Union Member States which are on the front lines and fear that the pressure of illegal migration will put a strain on their capacity and need support from other Member States. The rest of the European Union Member States, on the other hand, are worried about the security of the external borders and realise that their own national asylum, integration, and return systems will not be able to handle the scenario of a major influx if necessary steps are not put in place.

This complicated decision-making dilemma has always deadlocked the European Union policy-makers to effectively work out solutions for such situations. The European Union Member States have experienced considerable financial, social, and political troubles as a result of the current trend of increasing irregular migration and asylum seekers crossing the Mediterranean Sea. This has prompted the development of a comprehensive strategy that is narrowly focused on migration management. Therefore, the central discussion of the research

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<sup>16</sup> Caritas Europa, ‘Caritas Europa’s Analysis and Recommendations on the EU Pact on Migration and Asylum’, 9 December 2020, 1, <https://www.caritas.eu/position-paper-on-eu-pact-on-migration-and-asylum/>.

<sup>17</sup> Sandra Lavenex, “‘Failing Forward’ Towards Which Europe? Organized Hypocrisy in the Common European Asylum System”, *JCMS: Journal of Common Market Studies* 56, no. 5 (July 2018): 1200, <https://doi.org/10.1111/jcms.12739>.

deals with the emergence of the externalisation dimension in the European Union migration and asylum policy. Specifically, the research covers the institutionalisation of the external dimension of the European Union migration policy in the New Pact on Migration and Asylum as an important migration management mechanism.

In order to prevent the surge in illegal border crossings and irregular arrivals, the European Union is implementing a set of tools like cooperation with migrant sending and transit countries to externalise border management as well as provide those countries with financial resources to create more opportunities for the potential migrants in their home countries. Consequently, these measures have mixed results but in the short term, they contribute to complicating people's movement possibilities and making them more dangerous in some cases. So, the research problem is the further development of the externalisation dimension in the New Pact on Migration and Asylum despite the CSOs' strong positions regarding its negative consequences on the refugees and migrants' safety and human rights.

### **1.3 Research Aim and Question**

The previous section describes how the European Union cooperates with the third countries to enforce externalisation mechanisms and establish a type of buffer zone to curb the number of illegal migration. Following this, the research aim is to explore the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum from the perspective of the European-level CSOs.

In that perspective, this thesis will set and seek to answer the following research question: *how do the European-level CSOs working in the field of migration and asylum evaluate the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum?*

### **1.4 Definition of Terms**

This section gives short definitions of the most used terms throughout the thesis chapters. Some of them may have broader meaning in general but they are narrowed down to meet the purpose of the current research.

*Externalisation* can be characterised as “the extension of border and migration controls beyond the so-called ‘migration receiving nations’ in the Global North and into neighbouring countries

or sending states in the Global South”.<sup>18</sup> The term also means “processes of territorial and administrative expansion” of the receiving state.<sup>19</sup> Externalisation may thus become an essential component of migration management. It is important to keep in mind that externalisation involves a cooperation with third countries to manage concerns of the European Union migration control. Third countries that cooperate with the European Union on these matters are mainly countries of origin or countries of transit. Therefore, the European Union’s border control procedures and responsibilities are gradually being delegated to third countries as a result of this externalisation of migration management.<sup>20</sup> This practice can also be explained as “borders’ control by proxy, i.e. delegating migration management to third actors with an open mandate”.<sup>21</sup> The variety of methods through which the European Union and Member States enhance their policies to control migration across their borders with initiatives to implement such control extraterritorially and through other countries rather than their own.<sup>22</sup>

*Civil Society Organisation.* According to EUR-Lex, an official website of the European Union law and other public documents of the Union, a CSO is a type of organisational structure whose members serve the public interest via democratic means and serve as a bridge between government and citizens.<sup>23</sup> The World Bank characterises the CSO as “the wide array of non-governmental and not for profit organisations that have a presence in public life, express the interests and values of their members and others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.”<sup>24</sup> Klaus Schwab, the chairman of the World Economic Forum, highlights that civil society is a legitimate community that positions together

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<sup>18</sup> Inka Stock, Ayşen Üstübcici, and Susanne U. Schultz, ‘Externalization at Work: Responses to Migration Policies from the Global South’, *Comparative Migration Studies* 7, no. 1 (December 2019): 1, <https://doi.org/10.1186/s40878-019-0157-z>.

<sup>19</sup> Maribel Casas-Cortés, Sebastian Cobarrubias, and John Pickles, “‘Good Neighbours Make Good Fences’: Seahorse Operations, Border Externalization and Extra-Territoriality’, *European Urban and Regional Studies* 23, no. 3 (July 2016): 231, <https://doi.org/10.1177/0969776414541136>.

<sup>20</sup> Elin Palm, ‘Externalized Migration Governance and the Limits of Sovereignty: The Case of Partnership Agreements between EU and Libya’, *Theoria* 86, no. 1 (February 2020): 11–12, <https://doi.org/10.1111/theo.12224>.

<sup>21</sup> Stefania Panebianco, ‘The EU and Migration in the Mediterranean: EU Borders’ Control by Proxy’, *Journal of Ethnic and Migration Studies* 48, no. 6 (26 April 2022): 14, <https://doi.org/10.1080/1369183X.2020.1851468>.

<sup>22</sup> Violeta Moreno-Lax and Martin Lemberg-Pedersen, ‘Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation through Externalization’, *Questions of International Law* 56, no. 1 (28 February 2019): 5.

<sup>23</sup> ‘Civil Society Organisation’, Glossary of summaries, EUR-Lex, accessed 28 June 2022, <https://eur-lex.europa.eu/EN/legal-content/glossary/civil-society-organisation.html>.

<sup>24</sup> ‘Civil Society’, Glossary, World Bank, 28 February 2022, <https://www.worldbank.org/en/about/partners/civil-society/overview>.

with other stakeholders in global governance and progressively establishing partnerships with governments, and contributing to the multilateral consultation processes on various matters.<sup>25</sup>

*The Dublin Regulation*, commonly referred to as Dublin III, is a piece of the European Union legislation that specifies which Member State is in charge of reviewing an applicant's asylum request. Usually, the Member States where an asylum seeker enters the European Union for the first time is responsible.<sup>26</sup>

*Migration Management* is considered as an “umbrella terminology”<sup>27</sup> that incorporates an array of measures and strategies that deal with migration. Although the term was introduced to guarantee better protection and promote negotiations to establish more legal ways for migration, it also encompasses measures like remote control, externalisation, and border management. Despite the initial ‘neutral’ connotation of the term, it has evolved to mean an umbrella term that refers to restrictive measures in Global North.<sup>28</sup>

*Readmission Agreement* is defined by the European Commission as “an agreement between the European Union and/or an European Union Member States with a third country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence in the territories of the third country or one of the European Union Member States, and to facilitate the transit of such persons in a spirit of cooperation.”<sup>29</sup>

*Schengen Agreement* is a treaty that is described as a foundation of the Schengen Area in Europe where internal border checks have mainly been abolished. The Agreement was signed in 1985 in Schengen, Luxembourg, and the Convention implementing that Agreement was signed in 1990. These two documents marked the beginning of the concept of free movement

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<sup>25</sup> ‘The Future Role of Civil Society’ (World Economic Forum, January 2013), 7, [https://www3.weforum.org/docs/WEF\\_FutureRoleCivilSociety\\_Report\\_2013.pdf](https://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf).

<sup>26</sup> ‘What Is the Dublin Regulation?’, UK in a changing Europe, accessed 28 June 2022, <https://ukandeu.ac.uk/the-facts/what-is-the-dublin-regulation/>.

<sup>27</sup> Ruben Zaiotti, ed., *Externalizing Migration Management: Europe, North America and the Spread of ‘Remote Control’ Practices*, Routledge Research in Place, Space and Politics Series (London ; New York: Routledge, Taylor & Francis Group, 2016), 265.

<sup>28</sup> Martin Geiger and Antoine Pécoud, ‘Migration, Development and the “Migration and Development Nexus”’, *Population, Space and Place* 19, no. 4 (July 2013): 372, <https://doi.org/10.1002/psp.1778>.

<sup>29</sup> ‘Readmission Agreement’, Glossary, European Commission, accessed 28 June 2022, [https://ec.europa.eu/home-affairs/pages/glossary/readmission-agreement\\_en](https://ec.europa.eu/home-affairs/pages/glossary/readmission-agreement_en).

in Europe. Seven European Union countries initiated the implementation of the Schengen Agreement in 1995.<sup>30</sup>

*Safe third country* is defined by the European Commission as a country where a person seeking international protection is free from threats based on race, religion, nationality or political opinion and receives protection when their refugee status is confirmed.<sup>31</sup>

## **1.5 Scope and Significance**

The scope of this study is limited to the externalisation dimension of the European Union's New Pact on Migration and Asylum from the perspective of the European-level CSOs. Although this is not a recent phenomenon, only proposals of the European-level CSOs which were released between September 23, 2020 and January 31, 2022 that discuss the externalisation dimension of the New Pact on Migration and Asylum have been collected for the analysis. This indicates that the thesis will not be able to analyse other aspects of the European Union migration management developed in the New Pact within this time frame. Therefore, the conclusions are primarily limited to the context of the externalisation dimension in the New Pact. Nevertheless, it is expected that this thesis contributes to the existing knowledge about the development of externalisation and its impact on third countries.

This thesis adds to the discussion on the externalisation dimension of the European Union migration management by compiling the existing knowledge and literature to create a better picture of the current situation and developments, instead of focusing on a single aspect of the process like orchestration or securitisation. Besides, the research aim and research question are relevant since the externalisation of migration management is becoming a normal instrument for the European Union despite the critical consequences for migrants' human rights and safety.

## **1.6 Structural Outline**

The thesis consists of five chapters. Chapter 1 provides an introduction and background of the research topic as well as its scope and scholarly significance to academia. Chapter 1 also presents the definition of terms, research problem, research question and objectives of the thesis.

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<sup>30</sup> 'Schengen Area', Glossary, European Commission, accessed 28 June 2022, [https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/schengen-area\\_en](https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/schengen-area_en).

<sup>31</sup> 'Safe Third Country', Glossary, European Commission, accessed 29 June 2022, [https://ec.europa.eu/home-affairs/pages/glossary/safe-third-country\\_en](https://ec.europa.eu/home-affairs/pages/glossary/safe-third-country_en).

Chapter 2 contains the literature review and theoretical framework of the research. Chapter 2 also features the contemporary context of the subject and emerging perspectives of externalisation in the European Union's migration policy as well as the literature gap.

The methodology of the research in relation to the research aim and question is reflected in Chapter 3. This chapter introduces the overall research design, data collection and analysis methods, theoretical framework and methodological limitations of the thesis.

Chapter 4 reviews the emergence of the externalisation dimension of the European Union migration policy and discusses its developments examining the New Pact on Migration and Asylum. Then, it focuses on the proposals of the European-level CSOs to analyse the European Union's externalisation instruments through the cooperation with third countries. The policy recommendations and future of the externalisation are also discussed in this chapter

The conclusion chapter gives an overall assessment on the externalisation dimension of the New Pact on Migration and Asylum. Moreover, this chapter provides a possible set of directions for further research as well as the limitations of the current one.

## Chapter 2.

# LITERATURE REVIEW

This chapter presents the literature review of the conducted research. The chapter highlights the literature gap, contemporary context of the topic and emerging perspectives of externalisation in the European Union's migration policy.

The current literature review presents a restricted number of materials owing to the aim of the research. The external dimension of the European Union migration policy is becoming a prevalent yet controversial phenomenon among scholars' circles. Since migration is a dynamic topic, relevant law and policies tend to be changing over a period so new and different aspects of externalisation emerge in the academia as well.

The externalisation dimension of the European Union migration policy deploys different instruments and strategies such as formal/informal bilateral/multilateral cooperation and agreements with third countries. Within the framework of such cooperation with third countries "direct intervention and preventive policies are supported with more indirect actions (e.g., providing support, development assistance and capacity-building activities)."<sup>32</sup> Several authors note that the externalisation dimension in the European Union migration policy has progressed through a number of crucial times. Lavenex defines three key milestones. They are the Schengen Agreement (1985), the 'safe third country rule' set in the Dublin Regulation (1990) and the readmission agreements with the third countries.<sup>33</sup> Hallvik break them into following fluid time phases: 1990–2003 (Schengen Agreement), 2004–2014 (Dublin Regulation) and 2015–2019 (readmission agreements with the third countries).<sup>34</sup>

The chapter is divided into three sections. The first section provides a historical background and the emergence of the externalisation dimension of the European Union migration policy. The second section focuses on the contemporary context of the topic. The waves of the European Union enlargement and refugee crisis dramatically changed the many scholars' views

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<sup>32</sup> Ela Gökalp Aras, 'The European Union's Externalisation Policy in the Field of Migration and Asylum: Turkey as a Case Study' (Swedish Research Institute in Istanbul (SRII), March 2021), <https://doi.org/10.5281/zenodo.4587982>.

<sup>33</sup> Sandra Lavenex, 'Shifting up and out: The Foreign Policy of European Immigration Control', *West European Politics* 29, no. 2 (March 2006): 334, <https://doi.org/10.1080/01402380500512684>.

<sup>34</sup> Kristina Hallvik, 'The Externalization of EU Migration Policy: A Path Dependent Institution?' (University of Oslo, 2019), 17.

and brought new perspectives to the topic. The last section discusses the previous research in the area and reviews the limitations.

## 2.1 Historical Background

The recently announced New Pact on Migration and Asylum has been widely discussed among the CSOs and scholars. Some CSOs made intense criticism to the address of the European Union over its migration and asylum related policies which lay more emphasis on externalisation and cooperation with third countries. At this point, looking back to the history of the externalisation is important and as Gibney underlines the major refugee receiving countries in Europe introduced progressively restrictive measures to prevent the inflow with the end of Cold War.<sup>35</sup>

Zaiotti further develops the previous argument taking into consideration the turbulent period after the fall of Iron Curtain and stated that many individuals sought refuge and a better life in the Western part of Europe.<sup>36</sup> Zaiotti argues that governments could justify their evolving strict migration policies with the ‘crisis’ narrative which was present at that time.<sup>37</sup> According to Solimano, exceptional conditions during the times of crises make countries establish tough policy measures, especially in migration sphere but these measures often stay even after the situation is under control.<sup>38</sup> The long-term solutions for the similar situations in future are often built on the basis of those tough measures. The theoretical framework that deploys the current research, namely ‘path dependence’ and ‘failing forward’ helps to explain that phenomenon. That is to say that many laws and strategies of the European Union migration acquis communautaire somehow built on the previous restrictive measures following the path dependence framework.

As Zaiotti underlines, managing migration movement is exceedingly difficult because of many constraints such as political, legal, financial and moral. They make it complicated for policymakers to establish effective tools to control mobility within borders. Therefore, states are interested in stopping migrants before they cross the border of their final destination.<sup>39</sup> In

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<sup>35</sup> Matthew Gibney, ‘Beyond the Bounds of Responsibility: Western States and Measures to Prevent the Arrival of Refugees’ (University of Oxford, 2005), 16–17.

<sup>36</sup> Ruben Zaiotti, ed., *Externalizing Migration Management: Europe, North America and the Spread of ‘Remote Control’ Practices*, Routledge Research in Place, Space and Politics Series (London ; New York: Routledge, Taylor & Francis Group, 2016), 3.

<sup>37</sup> Zaiotti, 3.

<sup>38</sup> Andres Solimano, *International Migration in the Age of Crisis and Globalization: Historical and Recent Experiences* (New York: Cambridge University Press, 2010), 9–10.

<sup>39</sup> Zaiotti, *Externalizing Migration Management*, 4.

this respect, the term externalisation dates to the 20<sup>th</sup> century. Zolberg underscores that remote control instruments like visas were also applied extensively in that period to control mobility and curb an unwanted influx of people.<sup>40</sup> Boswell also shares the similar view on the topic. She argues that most west European countries' attempts to restrict or manage the influx of migrants and refugees in the 1970s proved to be counterproductive and caused the surge in illegal migration.<sup>41</sup> This is a convincing argument since very few scholars link the surge in illegal migration to previously implemented restrictive measures by the countries.

Boswell underscores that the European Union Member States, building on the previously established migration management framework, started close cooperation with migrant sending and transit countries to tackle the evolving issue of migration. Boswell mentions that this type of cooperation with third countries has become "as the 'external dimension' of EU cooperation in justice and home affairs."<sup>42</sup> She argues that the European Union had already been looking for ways of improving migration management as early as the 1990s. So, the cooperation with the countries of origin and transit, became a priority of the European Union migration agenda which can be linked to the beginning of the externalisation dimension in migration management.

Doukoure and Oger also share the similar position and underlined how externalisation functions in their report on Middle East and North African countries. They define externalisation as the reproduction of the European Union internal migration policy including the policing of borders and migration management to curb illegal influx of migrants in accordance with the European interests.<sup>43</sup> Frelick and his colleagues conceptualise externalisation as a mechanism that enables states "to prevent migrants, including asylum seekers, from entering the legal jurisdictions or territories of destination countries or regions or making them legally inadmissible without individually considering the merits of their protection claims."<sup>44</sup>

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<sup>40</sup> Andreas Fahrmeir, Olivier Faron, and Patrick Weil, *Migration Control in the North Atlantic World the Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period* (New York; Oxford: Berghahn, 2005), 197–198.

<sup>41</sup> Christina Boswell, 'The "External Dimension" of EU Immigration and Asylum Policy', *International Affairs* 79, no. 3 (May 2003): 619, <https://doi.org/10.1111/1468-2346.00326>.

<sup>42</sup> Boswell, 619.

<sup>43</sup> Ounia Doukoure and Helen Oger, 'The EC External Migration Policy: The Case of the MENA Countries.' 2007. CARIM Research Reports 2007/06.' (Florence: European University Institute, 2007), 2, <http://hdl.handle.net/1814/7991>.

<sup>44</sup> Bill Frelick, Ian M Kysel, and Jennifer Podkul, 'The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants', *Journal on Migration and Human Security* 4, no. 4 (2016): 193, <https://doi.org/10.1177/233150241600400402>.

As a result of searching for alternative migration management policies, two distinct strategies emerged in the European Union agenda. Boswell defines the first one as the ‘externalisation’ of migration control. She stresses that the first strategy consisted of two components. The first one is “the exportation of classical migration control instruments to sending or transit countries outside the EU.”<sup>45</sup> Effective border control to curb illegal migration and the capacity building in migration management are the main instruments among all.<sup>46</sup> According to Frelick, there are more groups of measures such as capacity building in the sending countries, improved readmission system, enhancing the asylum system in transit countries as well as their resources to intercept unlawful border crossings.<sup>47</sup> Lavenex defines the second component of the strategy as the “mobilisation of third countries in the control of migration flows to Europe, mainly through the adoption of the ‘safe third country’ rule”.<sup>48</sup> This component enables the Member States to reject the asylum claims and direct the applicants to the cooperating third country. Boswell argues that there are reasons for successful application of the first strategy. First, decisions were taken on an intergovernmental level in the 1980s and 1990s with a little intervention of supranational institutions. This significantly facilitated the adoption of strict control-oriented approach to migration while lacking the transparency or feedback from the public or CSOs.<sup>49</sup>

In addition, migration was highly politicised in the 1990s and linked to security issues such as organised crime, Islamophobia and terrorism. The European Union has already instrumentalized the refugee crisis to approach the issue through the lens of ‘securitisation’ and promote stricter policy initiatives. Buzan and Waever explain this phenomenon as treating the emerging situation like an existential threat so that the adoption of exceptional measures is justified to deal with the threat.<sup>50</sup> Crisis provides a condition under which a political authority is normalised and a rule-breaking behaviour to fight against the existential threat is justified. The New Pact on Migration and Asylum introduced a new set of border procedures and extended the detention time for asylum seekers.<sup>51</sup> The Pact was published after the events of

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<sup>45</sup> Boswell, ‘The “External Dimension” of EU Immigration and Asylum Policy’, 622.

<sup>46</sup> Boswell, 622.

<sup>47</sup> Frelick, Kysel, and Podkul, ‘The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants’, 195.

<sup>48</sup> Lavenex, ‘Shifting up and Out’, 334.

<sup>49</sup> Boswell, ‘The “External Dimension” of EU Immigration and Asylum Policy’, 623.

<sup>50</sup> Barry Buzan and Ole Waever, *Regions and Powers: The Structure of International Security* (Cambridge: Cambridge University Press, 2009), 491.

<sup>51</sup> European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum’ (2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A609%3AFIN>.

the Turkish-Greece border crisis in February<sup>52</sup> and Moria refugee camp tragedy in September 2020<sup>53</sup> which can explain that the new dimensions of the Pact that are more restrictive would not be tolerated in normal times but the current research will not focus on that perspective.

The second strategy addressed the ‘root cause’ of migration. Zapata Barrero claims that the ‘root cause’ approach focuses on reducing the push factors, which provoke people to migrate, by providing help and financial support.<sup>54</sup> This approach is development-based thus encourages policy innovations while the ‘remote control’ approach deals with migration relying on a security-based philosophy and deploys reactive methods to control the flow of migrants.

Lavenex separates three key milestones in the evolution of externalisation in the European Union migration management. They are the Schengen Agreement (1985), the ‘safe third country rule’ set in the Dublin Regulation (1990) and the readmission agreements with the third countries.<sup>55</sup> So, the Schengen Agreement of 1985 can be considered as the beginning of the ‘remote control’ process. As the Schengen Agreement abolished all checks at their common borders between the European Union Member States, free movement of people was established inside the Schengen zone.<sup>56</sup> So Lavenex claims that absence of border checks between the Schengen countries made the European Union move its migration control to the external borders.<sup>57</sup> The abolishing the internal border checks between Schengen Member States meant that now they should pay special attention to the safeguard their external borders to keep the stability and security in Schengen zone.

Many scholars including Lavenex consider that the Schengen Agreement triggered clear externalisation effects while the Tampere Summit of 1999 was the first official meeting to formally institutionalise the externalisation.<sup>58</sup> Boswell shares a similar opinion saying that “the so-called ‘external dimension’ of EU immigration and asylum policy was not formally

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<sup>52</sup> ‘Twelve Refugees Found Frozen to Death near Turkey-Greece Border’, Al Jazeera, 3 February 2022, <https://www.aljazeera.com/news/2022/2/3/12-migrants-found-frozen-to-death-near-turkey-greece-border>.

<sup>53</sup> ‘Greece: Devastating Fire Compounds Overcrowding and COVID-19 Challenges in Refugee Camp’, UN News, 9 September 2020, <https://news.un.org/en/story/2020/09/1071942>.

<sup>54</sup> Ricard Zapata-Barrero, ‘The External Dimension of Migration Policy in the Mediterranean Region: Premises for Normative Debate’ (Barcelona: Universitat Pompeu Fabra, 2013), 10, <https://www.semanticscholar.org/paper/THE-EXTERNAL-DIMENSION-OF-MIGRATION-POLICY-IN-THE-Zapata-Barrero/c257277709d90def5a19c96c94920eb5837a3f3b?p2df>.

<sup>55</sup> Lavenex, ‘Shifting up and Out’, 334.

<sup>56</sup> ‘The Schengen Acquis - Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at Their Common Borders’, 42000A0922(02) (1990), <http://data.europa.eu/eli/convention/2000/922/oj>.

<sup>57</sup> Lavenex, ‘Shifting up and Out’, 334.

<sup>58</sup> Lavenex, 333.

embraced by the European Council until October 1999.”<sup>59</sup> The pioneering conclusions of this special meeting specified that Justice and Home Affairs concerns to build the area of freedom, security and justice, which include migration and asylum matters, should be ‘integrated in the definition and implementation of other Union policies and activities’,<sup>60</sup> including external relations.

Lavenex identifies the application of ‘safe third country rule’ through the Dublin Convention of 1990 as the second milestone in the formation of externalisation.<sup>61</sup> Gil-Bazo defines the “safe third country” concept as “the notion that States’ obligations towards refugees who have not been granted the right to enter and/or stay in the country where they seek asylum do not go beyond the principle of non-refoulement, that is, the prohibition not to be returned to a territory where they may face prohibited treatment.”<sup>62</sup> It illustrates how the Dublin Regulation enabled the European Union to directly involve third countries into its migration management and mobilise them to contribute to the control of illegal migration influx into the European Union.

The third milestone of externalisation – the readmission agreements with the third countries, based on Lavenex’s arguments, will be discussed together with the latest changes in the following section.

## **2.2 Contemporary Context**

Lavenex suggests that the third milestone in the formation of externalisation in the European Union migration policy was the conclusion of readmission agreements with third countries thus including them into the emerging system of EU-wide cooperation.<sup>63</sup> As she highlights, initially, the selection of a third country as safe and the negotiations of readmission agreements concentrated on neighbouring countries of the European Union<sup>64</sup> and it was expanded beyond Europe later due to the emerging trends in migration.

Hallvik agrees with Lavenex that involving third countries into the EU policy-making through readmission agreements was the most comprehensive strategy in dealing with the illegal

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<sup>59</sup> Boswell, ‘The “External Dimension” of EU Immigration and Asylum Policy’, 620.

<sup>60</sup> ‘Tampere Presidency Conclusions’.

<sup>61</sup> Lavenex, ‘Shifting up and Out’, 334.

<sup>62</sup> María-Teresa Gil-Bazo, ‘The Safe Third Country Concept in International Agreements on Refugee Protection Assessing State Practice’, *Netherlands Quarterly of Human Rights* 33, no. 1 (March 2015): 44, <https://doi.org/10.1177/016934411503300104>.

<sup>63</sup> Lavenex, ‘Shifting up and Out’, 334.

<sup>64</sup> Lavenex, 334.

migration and refugee problems.<sup>65</sup> These readmission agreements mean that people who commit illegal border crossings will be returned to the country where they departed before arriving to the European Union borders regardless of their country of origin. Third countries are usually promised by the European Union with compensation like visa simplification or financial assistance.<sup>66</sup> The EU-Turkey deal is a vivid example in this regard. In order to reduce the number of asylum seekers, the European Union and Turkey signed a historic deal in March 2016.<sup>67</sup> As Terry analyses, Turkey was the country that hundreds of thousands of migrants had passed through on their way to the EU territory. The illegal migrants who attempted to reach Greece would be sent back to Turkey, and Ankara would take action to obstruct the opening of new migration routes. In return, the European Union agreed to give Turkey permission to resettle Syrian refugees on a one-to-one basis, simplify visa requirements for Turkish nationals, provide Turkey with 6 billion euros in aid for Syrian migrant communities, and restart postponed accession negotiations with Turkey.<sup>68</sup>

Hallvik argues that as readmission of asylum seekers and unauthorised immigrants has gained significant media attention and prompted public discussion, the implementation of readmission agreements has converted the European Union migration policy into a controversial subject. She explains that the main reason for such a strong resonance was the fact that the European Union was seeking close cooperation with the countries incompetent of ensuring the returnees' protection or their human rights.<sup>69</sup>

Boswell compares the 'remote control' and 'root cause' strategies and argues that the strategy of reducing migratory pressures through development aid could enable the European Union to prevent many of the undesirable effects of control-based policies. She underlines that understanding the internal concerns of migrant sending countries would contribute to address the migration issues better and channel the development aids effectively.<sup>70</sup> Meanwhile, a long-term approach to migration management that sidesteps the challenges of traditional migration control can be provided by targeting development aids to reduce the push factors for third

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<sup>65</sup> Hallvik, 'The Externalization of EU Migration Policy: A Path Dependent Institution?', 45–46.

<sup>66</sup> Hallvik, 19.

<sup>67</sup> 'EU-Turkey Statement', European Council, 18 March 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

<sup>68</sup> Kyilah Terry, 'The EU-Turkey Deal, Five Years On: A Frayed and Controversial but Enduring Blueprint', Migration Policy Institute, 8 April 2021, <https://www.migrationpolicy.org/article/eu-turkey-deal-five-years-on>.

<sup>69</sup> Hallvik, 'The Externalization of EU Migration Policy: A Path Dependent Institution?', 19.

<sup>70</sup> Boswell, 'The "External Dimension" of EU Immigration and Asylum Policy', 636.

country population. Instead of restricting movement of people, it aims to provide more opportunities for potential migrants to keep them where they are.

However, ‘root cause’ approach has its weaknesses and pitfalls. It is a time-consuming process and it may reduce migration pressures only in the longer run. Nyberg-Sorensen also mentions a development aid allocation dilemma meaning that beneficiary countries would be ‘good performers’ to use the financial means effectively.<sup>71</sup> Despite its shortcomings, the ‘root cause’ approach is considered more effective than ‘remote control’ approach which heavily relies on control-based mechanisms. Moreover, scholars argue that preventive strategy through development aids lay a constructive foundation to nurture mutually beneficial cooperation with third countries. This approach has more advantages over externalisation strategies which simply transfer responsibility to sending or transit countries that are underprepared to address those issues.

Discussing the contemporary trends in externalisation, Zaiotti underlines the implementation of more sophisticated border controls and their geographical expansion outside the European Union. He particularly mentions the European Union’s ambitious ‘smart’ remote control instrument, the European Border Surveillance System (EUROSUR), that supports Member States to conduct comprehensive border surveillance.<sup>72</sup> EUROSUR is a framework for information exchange and cooperation between Member States and Frontex to increase response capacity at the external borders. The framework aims to prevent irregular migration, stop cross-border crime, safeguard migrants’ lives.<sup>73</sup>

Kenk emphasises that ‘smart’ border technologies are being introduced to enhance the reliability of control measures.<sup>74</sup> These instruments help the authorities to collect and transmit migrants and refugees’ information through common databases such as EURODAC,<sup>75</sup> verify their identity and detect suspicious movements. However, these preventive measures are highly criticised due to their negative impact on migrants’ lives and rights. Because they do not

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<sup>71</sup> Ninna Nyberg-Sorensen, Nicholas Van Hear, and Poul Engberg-Pedersen, ‘The Migration-Development Nexus Evidence and Policy Options State-of-the-Art Overview’, *International Migration* 40, no. 5 (December 2002): 28, <https://doi.org/10.1111/1468-2435.00210>.

<sup>72</sup> Zaiotti, *Externalizing Migration Management*, 6–7.

<sup>73</sup> ‘EUROSUR’, European Commission, accessed 24 June 2022, [https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/border-crossing/eurosur\\_en](https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/border-crossing/eurosur_en).

<sup>74</sup> Vildana Kenk et al., ‘Smart Surveillance Technologies in Border Control’, *European Journal of Law and Technology* 4, no. 2 (2 October 2013), <https://ejlt.org/index.php/ejlt/article/download/230/378?inline=1>.

<sup>75</sup> ‘EURODAC’, European Commission, accessed 24 June 2022, [https://ec.europa.eu/home-affairs/pages/glossary/eurodac\\_en](https://ec.europa.eu/home-affairs/pages/glossary/eurodac_en).

address core factors that increase migration thus leaving migrants in difficult conditions often exposed to abuse and right deprivation.

Carrera, Parkin, and Den Hertog agree with this argument and criticise the European Union for its Eurocentric approach in cooperating with third countries. They recommend that ‘Home Affairs Diplomacy’ should be substituted for a fair, fully liable framework that integrates human mobility practice into a wider agenda, complements mutually beneficial foreign policy goals, and is led by non-Eurocentric views of cooperation with third countries.<sup>76</sup> Many scholars express similar concerns concerning the latest trends in the European Union external policy approach and tools. Tsourdi and Bruycker criticise that the European Union’s external migration management strategies and mechanisms heavily focus on capacity building while underdevelopment issues are not getting enough attention.<sup>77</sup> Moraga and Rapoport support the previous arguments and underline that the European Union’s projects mostly address burning migration and refugee issues, focusing all the efforts on border controls and “lump-sum transfers, which do not stand in proportion to the real cost occurring in the host country.”<sup>78</sup> Therefore, these policy initiatives fall short of addressing the core of the issue in third countries that trigger new waves of migration and refugee movement.

Reslow and Vink explain the multifaceted cooperation between the European Union, Member States and third countries deploying a “three-level game” analytical framework.<sup>79</sup> Though the current research does not include this analytical framework, mentioning it significantly facilitates the complex nature of the European Union external policies. Conditionality model provides an enhanced explanation to this framework as well. Schimmelfennig and Sedelmeier describe that the European Union places conditions on third countries and rewards for conformity or sanctions for nonconformity. In simple words, third countries then calculate the

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<sup>76</sup> Sergio Carrera, Joanna Parkin, and Leonhard den Hertog, ‘EU Migration Policy after the Arab Spring: The Pitfalls of Home Affairs Diplomacy’ (Centre for European Policy Studies (CEPS), 26 February 2013), 3–4, <http://www.eng.notre-europe.eu/media/arabspingmigration-carreradenhertogparkin-ne-jdi-feb13.pdf>.

<sup>77</sup> Evangelia Tsourdi and Philippe De Bruycker, ‘EU Asylum Policy: In Search of Solidarity and Access to Protection.’ (Florence: Migration Policy Centre, 2015), 6, <http://bookshop.europa.eu/uri?target=EUB:NOTICE:QMAP15006:EN:HTML>.

<sup>78</sup> Jesús Fernández-Huertas Moraga and Hillel Rapoport, ‘Tradable Refugee-Admission Quotas and EU Asylum Policy’ (IZA, November 2014), 10, <http://ftp.iza.org/dp8683.pdf>.

<sup>79</sup> Natasja Reslow and Maarten Vink, ‘Three-Level Games in EU External Migration Policy: Negotiating Mobility Partnerships in West Africa’, *JCMS: Journal of Common Market Studies* 53, no. 4 (July 2015): 858, <https://doi.org/10.1111/jcms.12233>.

costs of conformity and agree to cooperate as long as the benefits of the European Union rewards go above the domestic adoption expenses.<sup>80</sup>

Another interesting aspect that may be further studied is developed by Greenhill. She introduces a concept of “coercive engineered migration” which may illustrate the potential backfire of the externalisation of the European Union cooperation with third countries in migration.<sup>81</sup> She claims that weaker countries purposefully use migration-related crises so that they can manipulate them to realise their policy objectives like political or financial support.<sup>82</sup> In this regard Turkey is a good example when it opened its borders for migrants and asylum seekers creating a humanitarian emergency for the European Union.<sup>83</sup>

The following section introduces the similar research and studies carried out in the field and discusses the limitations.

### 2.3 Previous Research and Limitations

Externalisation is a relatively new phenomenon in the European Union’s migration and asylum policy. Nevertheless, there have been many studies conducted in this field which establishes more comprehensive understanding for young researchers. Previous studies mostly focused on analysing the implementation of the externalisation mechanisms by the European Union in transit countries.

Reha Atakan Çetin<sup>84</sup>, Gerda Heck and Sabine Hess<sup>85</sup>, Ayşen Üstübcü and Ahmet İçduygu<sup>86</sup> and others conducted an extensive research on the European Union’s practice of externalisation in

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<sup>80</sup> Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe’, *Journal of European Public Policy* 11, no. 4 (January 2004): 671–72, <https://doi.org/10.1080/1350176042000248089>.

<sup>81</sup> Kelly M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, Cornell Studies in Security Affairs (Ithaca, N.Y: Cornell University Press, 2010), 13.

<sup>82</sup> Greenhill, 30–31.

<sup>83</sup> Bulent Usta and Ali Kucukgocmen, ““Europe Is Nicer”: Migrants Head West after Turkey Opens Border’, *Reuters*, 28 February 2020, sec. Emerging Markets, <https://www.reuters.com/article/us-syria-security-turkey-migrants-idUSKCN20M0KK>.

<sup>84</sup> Reha Atakan Çetin, ‘Externalization of the European Union Migration Regime: The Case of Turkey’, *New Political Science* 42, no. 4 (1 October 2020): 538–57, <https://doi.org/10.1080/07393148.2020.1848341>.

<sup>85</sup> Sabine Hess and Gerda Heck, ‘Tracing the Effects of the EU-Turkey Deal. The Momentum of the Multi-layered Turkish Border Regime’, *Movements Journal for Critical Migration and Border Regime Studies* 3, no. 2 (3 November 2017), <http://movements-journal.org/issues/05.turkey/04.heck,hess--tracing-the-effects-of-the-eu-turkey-deal.html>.

<sup>86</sup> Ayşen Üstübcü and Ahmet İçduygu, ‘Border Closures and the Externalization of Immigration Controls in the Mediterranean: A Comparative Analysis of Morocco and Turkey – RETRACTED’, *New Perspectives on Turkey* 59 (November 2018): 7–31, <https://doi.org/10.1017/npt.2018.21>.

Turkey. More recent studies conducted by Elin Palm<sup>87</sup>, Patrick Müller and Peter Slominski<sup>88</sup> take Libya as a case study and analyse its Partnership Agreements with the European Union. Elsa Tyszler<sup>89</sup> explored the European Union border externalisation in Morocco. These studies mostly focus on transit and sending countries to assess the application and impact of the European Union externalisation mechanisms.

Maribel Casas-Cortes, Sebastian Cobarrubias, and John Pickles discussed the spatial logics of the European Union border externalisation practices in North and West Africa through the Operation Seahorse and other transnationally coordinated border control projects realised by Spain's Guardia Civil.<sup>90</sup> Dirk Godenau<sup>91</sup> and Luna Vives<sup>92</sup> examined the irregular sea migration to the Canary Islands and the effectiveness of the European Union externalisation practices to combat such illegal arrivals. Anna Triandafyllidou also conducted a research on externalisation of migration management and its effects on the Southern European Islands.<sup>93</sup>

The implemented external policies and mechanisms of the recent years including the New Pact on Migration and Asylum illustrate how externalisation of migration management in practice has moved to the countries further away from the European Union border lines. However, scholars and CSOs frequently draw attention to the lack of interest in the prospect of outsourcing and externalising the protection of migrants' human rights while they are on the move but so far only migration control is successfully delegated to third countries.

There is also an emerging trend since the second phase of the externalisation, namely after 'safe third country rule' through the Dublin Convention of 1990. Since then, the CSOs working in the field of migration and asylum have started actively proposing their feedback to the European Union's externalisation policies. Many CSOs expressed their critical positions through their proposals to the New Pact on Migration and Asylum. However, the current

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<sup>87</sup> Palm, 'Externalized Migration Governance and the Limits of Sovereignty'.

<sup>88</sup> Patrick Müller and Peter Slominski, 'Breaking the Legal Link but Not the Law? The Externalization of EU Migration Control through Orchestration in the Central Mediterranean', *Journal of European Public Policy* 28, no. 6 (3 June 2021): 801–20, <https://doi.org/10.1080/13501763.2020.1751243>.

<sup>89</sup> Elsa Tyszler, 'From Controlling Mobilities to Control over Women's Bodies: Gendered Effects of EU Border Externalization in Morocco', *Comparative Migration Studies* 7, no. 1 (December 2019): 25, <https://doi.org/10.1186/s40878-019-0128-4>.

<sup>90</sup> Casas-Cortes, Cobarrubias, and Pickles, "'Good Neighbours Make Good Fences'".

<sup>91</sup> Dirk Godenau, 'Irregular Maritime Immigration in the Canary Islands: Externalization and Communitarisation in the Social Construction of Borders', *Journal of Immigrant & Refugee Studies* 12, no. 2 (3 April 2014): 123–42, <https://doi.org/10.1080/15562948.2014.893384>.

<sup>92</sup> Luna Vives, 'Unwanted Sea Migrants across the EU Border: The Canary Islands', *Political Geography* 61 (November 2017): 181–92, <https://doi.org/10.1016/j.polgeo.2017.09.002>.

<sup>93</sup> Anna Triandafyllidou, 'Multi-Levelling and Externalizing Migration and Asylum: Lessons from the Southern European Islands', *Island Studies Journal* 9, no. 1 (2014): 7–22, <https://doi.org/10.24043/isj.290>.

literature review lacks to discuss academic works that analyse different CSOs' reactions to the New Pact on Migration and Asylum since it is a relatively new strategy. Therefore, the present research directly analyses the CSOs' proposals.

## Chapter 3.

# METHODOLOGY

This chapter provides the methodology of the research that is defined and explained in relation to the research aim and question. The chapter presents the overall research design, data collection and analysis methods, theoretical framework and methodological limitations of the thesis. The research aim is to explore the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum from the perspective of the European-level CSOs. Therefore, the research question is the following: *how do the European-level CSOs working in the field of migration and asylum evaluate the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum?*

The research is exploratory built on interpretivism. The thesis relies on a qualitative research method to satisfy the research problem and research question. Although the outcomes of this method are not measurable, the advantage of using it offers a full analysis of a research subject without imposing limits to the scope of the research.<sup>94</sup> The researchers' skills and experience define the success of qualitative research as being "fundamentally interpretive"<sup>95</sup> which means the researcher interprets the data. However, the conclusions may not be recognized as reliable since they represent the author's personal interpretations. There is also a risk of perceiving the results of qualitative research as a reflection of wider audience' views on the matters discussed.<sup>96</sup>

The official documents and websites of the European Union and the CSOs that are relevant to this research are considered to be the primary sources. The secondary sources are the journal articles, research/ working papers and other academic sources. Due to the dynamic nature of the externalisation dimension of the European Union migration policy, the range of the secondary sources are limited.

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<sup>94</sup> J. Collis & R. Hussey, *Business Research: A practical Guide for Undergraduate and Post graduate Students*, (Basingstoke, Palgrave Macmillan, 2003), 166.

<sup>95</sup> John W. Creswell and J. David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Thousand Oaks, CA: SAGE Publications, 2018), 182.

<sup>96</sup> J. Bell, *Doing your Research Project*, (Buckingham, Open University Press, 2005), 121.

### **3.1 Research Design**

This section introduces the research philosophy, methods of data collection and analysis, as well as informs the potential limitations and concerns that the author encounters. Using a case study, the thesis seeks to explore how the European Union develops the externalisation of migration management in the New Pact on Migration and Asylum. This research strategy allows the author to examine the data in-depth and, at the same time, build the analysis on the theoretical framework of ‘failing forward’ and ‘path dependency’.

The research is designed to be exploratory that intends to establish arguments that answers the research question. The final and conclusive solutions to the existing problems associated with externalisation of migration are not within the scope of this research.

The main reason of choosing the exploratory research design is its flexibility and adaptability to changes.<sup>97</sup> Since the migration is a dynamic phenomenon, the externalisation policies quickly transform depending on the range of circumstances such as sudden influx of illegal border crossings, change of migration rhetoric on a supranational level, etc. In addition, exploratory research is valuable in laying the foundation for future studies. It fits the aim of this research which is not widely studied yet.

The disadvantage of the exploratory research, however, includes the assumption that the final interpretation of the research may be biased and the finding may not be generalised as a result of relying on a modest number of sources.<sup>98</sup> The current research analyses the proposals of several CSOs on the externalisation of the European Union migration policy in the New Pact on Migration and Asylum since its announcement in September 2020. Therefore, the findings and conclusions of the current research may be subject to bias as well as difficult to generalise to a wider extent.

#### **3.1.1 Research Philosophy**

The research philosophy adopted to this thesis is interpretivism. Gemma Ryan argues that interpretivism consists of subjective truth and knowledge that is built on cultural and historical experiences and understanding. That’s why the researcher cannot be fully split up from their fundamental values and principles which will inevitably impact the way of data collection,

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<sup>97</sup> John Dudovskiy, “Exploratory Research,” *Business Research Methodology*, January 2022, <https://research-methodology.net/research-methodology/research-design/exploratory-research/>.

<sup>98</sup> Ibid.

interpretation and analysis.<sup>99</sup> This can be the major disadvantage meaning that the analysis generated may not be generalised since the data is strongly dependent on a specific context, perspective and principles.<sup>100</sup>

One of the reasons why interpretivism is adopted for this research is that it enables the researcher to study cross-cultural differences, ethical issues, analysis of factors impacting leadership deeply by applying qualitative research methods. Despite its disadvantage, the interpretivism fits to explore the externalisation phenomenon in the European Union migration policy and unlocks new dimensions of the discussion that are directly linked to moral and democratic values of the European Union itself ('organised hypocrisy' discussed in Chapter 2).

### **3.1.2 Research Type**

The nature of the research is inductive where certain observations and analysis lead to general theories and conclusions. Inductive research approach flows from the exploratory research design which is adopted to this thesis. One of the reasons to choose the inductive research approach is that it enables the researcher to work with small samples to produce qualitative data. Despite its advantages, the reliability of the inductive research results is considered to be under question since the conclusions and generalised theories of this approach are based on a small scale of observations.<sup>101</sup>

### **3.1.3 Research Strategy**

As a research strategy, case study is used. The case chosen for this research is development of the externalisation phenomenon in the European Union migration management focusing on the New Pact on Migration and Asylum from the perspective of the European-level CSOs. The main reason for choosing this case is the knowledge gap because of its novelty and actuality. There exist general discussions on the externalisation of the European Union migration management but very few studies have been conducted involving the proposals of the CSOs.

Most of the times, case study is used to analyse a specific event, but it can be applied to investigate processes and phenomenon as well according to Starman:

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<sup>99</sup> Gemma Ryan, "Introduction to Positivism, Interpretivism and Critical Theory," *Nurse Researcher* 25, no. 4 (2018): 9, <https://doi.org/10.7748/nr.2018.e1466>.

<sup>100</sup> Husam Helmi Alharahsheh and Abraham Pius, "A Review of Key Paradigms: Positivism VS Interpretivism," *Global Academic Journal of Humanities and Social Sciences* 2, no. 3 (June 30, 2020): 42, <https://doi.org/10.36348/gajhss.2020.v02i03.001>.

<sup>101</sup> K. Denzin, & Y. Lincoln, *The Sage Handbook of Qualitative Research*, 5th edition, (Thousand Oaks, CA: Sage Publications, 2017), 68.

case study is used when we analyse and describe, for example each person individually (his or her activity, special needs, life situation, life history, etc.), a group of people (a school department, a group of students with special needs, teaching staff, etc.), individual institutions or a problem (or several problems), process, phenomenon or event in a particular institution, etc. in detail. If we remain in such analyses on the descriptive level, then a case study is considered as a form of descriptive method, but if we climb to the causal level, case study proceeds towards causal experimental method.<sup>102</sup>

The criticism primarily concentrates on the potential subjectivity in the process of a case selection. The researcher's previous knowledge on a certain matter may impact their choice of the case causing favouritism and selection bias, as Starman argues.<sup>103</sup> However, the case selection centred around prior knowledge may enable the researcher to prepare a better research plan. They are more likely to develop a solid theoretical ground for the research, "which makes the procedure of theory testing more rigorous."<sup>104</sup>

### 3.1.4 Data Collection Method

The answering research question has been central to ensure that the right data is collected thus constructing higher validity. To collect the data, a purposive sampling (judgement sampling) is applied which involves the researcher using their expertise to choose the units that are most useful for the purposes of the research.<sup>105</sup>

Snowball method is employed in collecting the secondary data where different CSOs refer to one another. Publicly available analyses of the externalisation phenomenon by European based think tanks and scholars have been a good starting point to further collect the more topical and influential sources.

The present research relies on the following CSOs' proposals in regards to the New Pact on Migration and Asylum:

1. Amnesty International;
2. Caritas Europa;
3. Churches Commission for Migrants in Europe (CCME);
4. Commission of the Bishops' Conferences of the European Union (COMECE);

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<sup>102</sup> Adrijana Biba Starman, "The case study as a type of qualitative research," *Journal of Contemporary Educational Studies* 64, no. 1 (March 2013): 31, [https://www.sodobna-pedagogika.net/en/articles/01-2013\\_the-case-study-as-a-type-of-qualitative-research/](https://www.sodobna-pedagogika.net/en/articles/01-2013_the-case-study-as-a-type-of-qualitative-research/).

<sup>103</sup> Alexander Lawrence George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005), 24.

<sup>104</sup> Starman, 36.

<sup>105</sup> Paul J Lavrakas, *Encyclopedia of Survey Research Methods*, (Thousand Oaks, CA: Sage Publications, Inc., 2008), 645, <https://doi.org/10.4135/9781412963947>.

5. European Council on Refugees and Exiles (ECRE);
6. EuroMed Rights;
7. Human Rights Watch.

The list demonstrates the diversity of the CSOs involved which enables the thesis to analyse different standpoints.

The official EU databases, the website of the European Commission and relevant CSOs' official websites are considered to be the primary sources. Since the focus of the thesis is the externalisation dimension of the European Union migration, relevant policy documents and strategies on migration management will be addressed as a primary source. The following primary sources are addressed most:

1. European Commission, Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020;
2. Amnesty International, "The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded" (2021.10.06);
3. Caritas Europa, "Caritas Europa's analysis and recommendations on the EU Pact on Migration and Asylum" (2020.12.09);
4. Churches Commission for Migrants in Europe (CCME), "Comments on the EU New Pact on Migration and Asylum" (2021.04.13);
5. Commission of the Bishops' Conferences of the European Union (COMECE), "Statement by the COMECE Working Group on Migration and Asylum on the EU Pact on Migration and Asylum proposed by the European Commission" (2020.12.15);
6. European Council on Refugees and Exiles (ECRE), "The new Pact on Asylum and Migration: An opportunity seized or squandered?" (2020.02.14);
7. ECRE, "Comments on the Commission Proposal for a Regulation on Asylum and Migration Management" (2021.02.03);
8. EuroMed Rights, "Fresh start, renewed risks: The external dimension of the EU Pact on Migration and Asylum" (2021.01.27);
9. Human Rights Watch, "Joint CSO Letter on Containment at External Borders" (2021.03.18).

Secondary sources consist of journal articles, research/ working papers and other academic literature. Since the New Pact on Migration and Asylum is a new comprehensive strategy released in 2020, the externalisation dimension in the document is not widely discussed yet. For the same reason, it is challenging to collect academic literature that completely focuses on that issue which imposes some limits to support the research with a solid academic background.

### 3.1.5 Data Analysis Method

The method of data analysis adopted for the current research is discourse analysis. It should not be confused with critical discourse analysis which, according to Huckin, focuses on the context-sensitive text and interprets its internal structure.<sup>106</sup> Discourse analysis equally places importance on the text, context and the actors thus applying a broader understanding of discourse.<sup>107</sup> The textual data collected for the analysis includes a number of documents produced mainly by the Commission and other relevant CSOs. However, there is a tension between “the text and the context in which that text is situated” at a methodological level in discourse analytic research.<sup>108</sup>

### 3.2 Theoretical Framework

The present thesis deploys two theoretical frameworks. One is ‘failing forward’ and another one is path dependence. It is assumed that these theoretical frameworks help the current research to identify, assess and analyse the chosen topic better.

Sandra Lavenex defines the process of ‘failing forward’ as a combination of intergovernmentalism and neofunctionalism that address migration and asylum-related issues with incomplete solutions that quickly become insufficient to solve emerging problems and lead to crises. This process contributes to European integration, she underlines. According to her argument, frequent crises push supranational organisations to put institutional pressure on Member States to start the new rounds of negotiations which lead to new but incomplete solutions “thereby moving Europe ‘forward’ through incremental steps.”<sup>109</sup> However, the fundamental problem is how to measure the level of integration in the European Union given that the failing forward framework does not provide any specific methods for doing so. The integration process, in Scipioni’s opinion, is “a mix of the inclusion of further competences in the Community portfolio and the increasing empowerment of the European Union institutions.”<sup>110</sup> Predicting the future directions that empowered institutions of the Union take

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<sup>106</sup> Tom Miller and Thomas Huckin, “Critical Discourse Analysis,” in *Functional Approaches to Written Text: Classroom Applications* (Washington, D.C.: Office of English Language Programs. United States Department of State, 1997), 78.

<sup>107</sup> Julianne Cheek, “At the Margins? Discourse Analysis and Qualitative Research,” *Qualitative Health Research* 14, no. 8 (2004): 1144, <https://doi.org/10.1177/1049732304266820>.

<sup>108</sup> Cheek, 1146.

<sup>109</sup> Sandra Lavenex, 1198.

<sup>110</sup> Marco Scipioni, “Failing Forward in EU Migration Policy? EU Integration after the 2015 Asylum and Migration Crisis,” *Journal of European Public Policy* 25, no. 9 (2017): 1369, <https://doi.org/10.1080/13501763.2017.1325920>.

is another key rhetorical question. How can a framework be developed to predict the subsequent phases of integration as a result of the ‘failing forward’ process? The issue with the European Union’s asylum policy serves as an example of the ideological tensions that arise when a regulatory polity is transformed into a political Union<sup>111</sup> that raises questions about dominance.

Erik Fossum emphasises that “a relationship or a circumstance wherein an actor (person, organisation, collective) can be arbitrarily interfered with and/or manipulated”.<sup>112</sup> He contends that both ineffective instances of copying from the Member State to the European Union level and selective uptake of particular Member States’ ideas, norms, established practises, and cultures by the European Union institutions might result in dominance. Furthermore, certain ways of presenting problems and potential solutions could make institutions lag even further behind in quickly changing circumstances.<sup>113</sup> The development of dominance therefore indicates a decline in democracy. The crises and corresponding reactions of the European Union have had negative impacts on a democratic atmosphere.

The national and European legislatures have struggled to deal with the emergence of authoritarian right-wing populism since they have repeatedly been neglected both during and after crises. The legal and administrative institutions intended to safeguard constitutional democracy have deteriorated as a result of democratic backsliding that has occurred in some Member States.<sup>114</sup> Migration and asylum-related frameworks are no exception, therefore seeing the involvement of the European-level CSOs with their proposals may provide a different standpoint in this situation because they are able to keep an eye on the accountability of the policies and provide constructive feedback.

Eiko Thielemann emphasises that the process of ‘Europeanization’ is one of reciprocal processes in which Member States ‘upload’ their policy agendas to the European level<sup>115</sup> in an effort to influence “the trajectory of European integration.”<sup>116</sup> Initial stages of European cooperation on migration was mainly intergovernmental, which granted more authority to the

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<sup>111</sup> Sandra Lavenex, 1208.

<sup>112</sup> John Erik Fossum, “Europe’s Triangular Challenge: Differentiation, Dominance and Democracy” (Oslo, Norway: ARENA, 2019), 2.

<sup>113</sup> *Ibid.*, 24.

<sup>114</sup> *Ibid.*, 3.

<sup>115</sup> Saskia Bonjour, Ariadna Ripoll Servent, and Eiko Thielemann, “Beyond Venue Shopping and Liberal Constraint: A New Research Agenda for EU Migration Policies and Politics,” *Journal of European Public Policy* 25, no. 3 (2017): 414, <https://doi.org/10.1080/13501763.2016.1268640>.

<sup>116</sup> Eiko Thielemann, “The ‘soft’ Europeanisation of migration policy: European integration and domestic policy change,” ECSA Seventh Bienal Internacional Conference, (2001) 8.

national governments because they could advance or circumvent particular policies using both the national and the European level. Guiraudon proposed the ‘venue shopping’ theory in 2000 to contend that shifting policymaking to the European level allowed national governments to “circumvent national constraints on migration control”<sup>117</sup> in light of the political climate at that time.

However, the communitarization process that transferred power in the management of European immigration from the Member States to supranational institutions that served as ‘liberal constraints’ on the national governments was completed by the Amsterdam Treaty (1999) and the Lisbon Treaty (2009).<sup>118</sup> The ongoing tensions between supranationalism and intergovernmentalism become more visible in that period. Saskia Bonjour and her colleagues underscore that supranational organisations are more liberal and “more ‘refugee-friendly’ than Interior ministers”<sup>119</sup> which will encourage national governments to follow a similar approach. However, one would argue that the liberal nature of the supranational institutions is changing in the context of the ‘failing forward’ process, particularly in the decision-making connected to migration and asylum. This might contribute to the migration policy of the European Union to become more externalised.

The New Pact on Migration and Asylum serves as the unit of observation for the above-mentioned argument. Because the solidarity and fair share of responsibility mechanism was made up of a set of incomplete and non-binding agreements, the previous legislative acquis in the areas of migration and asylum proved insufficient in the face of the refugee crisis in 2015. The following round of the ‘failing forward’ process achieved more comprehensive mechanisms of solidarity such as return sponsorship, relocation, and immediate operational financial support after taking into account the prior experiences.<sup>120</sup> All of these mechanisms are a component of the externalisation dimension of the European Union migration policy.

Applying the ‘failing forward’ theoretical framework into practice, we can see how the new rounds of agreements regarding the migration and asylum laws have changed. The proposals made by CSOs throughout these cyclical processes can provide real and valuable feedback

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<sup>117</sup> Virginie Guiraudon, “European Integration and Migration Policy: Vertical Policy-Making as Venue Shopping,” *JCMS: Journal of Common Market Studies* 38, no. 2 (2000): 251, <https://doi.org/10.1111/1468-5965.00219>.

<sup>118</sup> Saskia Bonjour et al, 412.

<sup>119</sup> Ibid.

<sup>120</sup> ‘New Pact on Migration and Asylum: Questions and Answers’, European Commission, 23 September 2020, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_1707](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707).

which may not always be taken into account but still represents a variety of perspectives and raises Member States' accountability for their policies.

The second theoretical framework of the thesis is path dependence. Hansen argues that a clear definition of path dependence does not simply mean that today's choices and decisions are "in some general sense the product of earlier decisions and events."<sup>121</sup> Path dependency occurs in the case of reinforcing the preceding decision making it a part of the future development of events.<sup>122</sup> Levi underlines the notion of path dependence quite sceptically:

Path dependence does not simply mean that "history matters." This is both true and trivial. Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice. Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other – and essential if the chosen branch dies – the branch on which a climber begins is the one he tends to follow.<sup>123</sup>

Levi's argument may shed light on the complex nature of path dependence theory. The principal element is history but as the argument shows, it should be more than that. Pierson underlines that clarifying "how it got there" moment will explain the importance of a certain social variable. He continues to explain that "previous events in a sequence influence outcomes and trajectories but not necessarily by inducing further movement in the same direction."<sup>124</sup> Hansen simplifies it another way, "path dependence occurs when a decision limits the range of available options at subsequent points and, in so doing, encourages continuity in the form of a retention of the original choice."<sup>125</sup>

The reason for choosing the path dependence theory is twofold. First of all, the externalisation phenomenon in the European Union migration management has been developing mainly since the negotiations of the Schengen Agreement. The externalisation in the New Pact on Migration and Asylum is a result of a sequence of previous decisions adopted at supranational as well as

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<sup>121</sup> Randall Hansen, "Globalization, Embedded Realism, and Path Dependence," *Comparative Political Studies* 35, no. 3 (2002): 269, <https://doi.org/10.1177/0010414002035003001>.

<sup>122</sup> Ibid.

<sup>123</sup> Margaret Levi, "Reconsiderations of Rational Choice in Comparative and Historical Analysis," *Comparative Politics*, (1997): 27, <https://doi.org/10.1017/cbo9780511804007.006>.

<sup>124</sup> Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* 94, no. 2 (2000): 252, <https://doi.org/10.2307/2586011>.

<sup>125</sup> Hansen, 270.

national levels. Employing the path dependence theory enables the researcher to better understand the evolution of the externalisation.

Secondly, understanding the path of previous developments empower the researcher to interact with the phenomenon better and discuss the policy feedback that is proposed by the chosen CSOs in regard to the externalisation. Moreover, ‘failing forward’ and path dependence theoretical frameworks complement each other. ‘Failing forward’ illustrates the cycle of decision-making while path dependence explains the origins of the decisions.

### **3.3 Methodological Limitations**

This subsection informs the methodological limitations and challenges the researcher faces and addresses throughout the thesis. The methodology part of the studies in the field of migration and asylum is important since it is gaining increased attention.

One key limitation of the research is that migration is an ongoing and constantly changing phenomenon. Due to its dynamic nature, the European Union migration management strategies, policies, laws, and general approach may change to cope with the actual problems. So, the various CSOs may propose distinct policy feedback and react to the externalisation dimension of the New Pact on Migration and Asylum. Therefore, peer-reviewed and academic sources are not always available, especially in the case of the New Pact on Migration and Asylum as it has recently been announced.

While purposive sampling enables the research to be tailored to the externalisation of the European Union migration management case, it complicates the generalisation of the conclusions and leaves space to the researcher’s interference through both the choices and potential biases.

Despite the limitations, finding credible and valid sources is always prioritised during the research. Most data are collected from the acknowledged intergovernmental organisations and international non-governmental organisations to ensure the authenticity.

## **Chapter 4.**

# **EXTERNALISATION DIMENSION OF THE EU MIGRATION POLICY AND CSO**

The chapter provides a brief history of emergence and development of externalisation, its current reflection in the New Pact on Migration and Asylum and the possible future directions of the externalisation in the European Union migration management. This chapter also contains analysis of the European-level CSOs' proposals to the New Pact on Migration and Asylum regarding the externalisation.

The chapter presents the discussion of the research that is defined and explained in relation to the research aim and question. The research aim is to explore the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum from the perspective of the European-level CSOs. Therefore, the research question is the following: *how do the European-level CSOs working in the field of migration and asylum evaluate the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum?*

The chapter consisted of four sections. The first section deals with the emergence and development of the externalisation dimension of the European Union migration policy. This section contains ideas that have been illustrated in the first section of the Literature Review chapter. The second section focuses on the New Pact on Migration and Asylum where the institutionalisation of the externalisation is discussed. The third section reviews the European-level CSOs' proposals in relation to the New Pact on Migration and Asylum. This section also presents policy recommendations although they are considered to be dynamic due to the changing nature of the migration phenomenon. The last section of the chapter discusses the future trends of externalisation and possible directions for the upcoming studies.

## 4.1 Emergence and Development of the EU Externalisation Policy

The external migration management policy of the European Union deploys various instruments and strategies ranging from formal multilateral cooperation to informal bilateral agreements with third countries. These frameworks of cooperation enable the European Union to apply preventive policies backed by more indirect activities in third countries such as financial assistance, development aids, capacity building training, etc.

This ‘venue-shopping’ practice by the Member States’ officials who are looking for autonomy to implement a migration control agenda “more favourable to restrictive control policies”<sup>126</sup> and far from domestic restrictions have increased the EU involvement in third countries’ migration policies and decision-making. Hence, the ‘external dimension’ of the EU migration and asylum policy was officially announced at the European Council meeting in Tampere in 1999.<sup>127</sup> Since then, influencing the migration influx coming from outside of the EU’s borders has become a key element of the European migration strategy. Also, the line between internal and external security is puzzled by the external dimension<sup>128</sup>, which introduced the philosophy different from the intra-European interaction by prioritising security over rights and preventing migration over people’s free movement.<sup>129</sup> Basically, this creates conditions in the field of external migration control for the European Union and its Member States free from the limitations they encounter when implementing a migration containment agenda at the internal level.

The European Union Member States soon discovered that they could gain more autonomy in the field of external cooperation due to the fact that their actions at this level were not interfered by the competitive domestic stakeholders and other social actors constantly bringing up the social problems and their potential solutions to public discussion.<sup>130</sup> Thus, the Member States have played a significant role in advancing the migration containment agenda in the external affairs. As a result, the EU institutions managed to implement gradually progressive approaches to migration since they are less exposed to the electoral pressures compared to the

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<sup>126</sup> Virginie Guiraudon, ‘European Integration and Migration Policy: Vertical Policy-making as Venue Shopping’, *JCMS: Journal of Common Market Studies* 38, no. 2 (June 2000): 261–62, <https://doi.org/10.1111/1468-5965.00219>.

<sup>127</sup> Boswell, ‘The “External Dimension” of EU Immigration and Asylum Policy’, 620.

<sup>128</sup> Lavenex, ‘Shifting up and Out’, 330.

<sup>129</sup> Paul Heywood, Erik Jones, and Martin Rhodes, eds., *Developments in West European Politics 2* (Houndmills, Basingstoke, Hampshire ; New York: Palgrave, 2002), 264.

<sup>130</sup> Lavenex, ‘Shifting up and Out’, 331.

governments of the Member State.<sup>131</sup> These institutions also have broader authority which explains the narratives of tackling illegal migration issues through tailored development programmes. The current nature of the European Union external migration management is a result of the Member States initial external migration policies when the interior ministers primarily focused on bilateral cooperation with important third countries implementing security-oriented agendas.<sup>132</sup> Although the focus of this research does not include security related aspects of migration to the European Union, it is worth mentioning that it is one of the key areas of concern when it comes to external policies and cooperation with third countries.

These developments have demonstrated that the move towards a transgovernmental cooperation was not fully driven by the need for a common supranational migration policy. Instead, it was originated from some Member States' ambitions to circumvent domestic barriers to political reforms that were established by the constitutional foundations on the ground of "fundamental rights, humanitarian obligations and political unification."<sup>133</sup> These changes happened gradually and it is stated in the Literature Review Chapter, the externalisation dimension in the European Union migration policy has progressed through three key milestones. They are the Schengen Agreement (1985), the 'safe third country rule' set in the Dublin Regulation (1990) and the readmission agreements with the third countries. The following subsections deal with each of those three milestones along with other stages in detail.

#### **4.1.1 Emergence of the Legal and Institutional Framework of Externalisation**

The Schengen Agreement of 1985 was the most significant forerunner to the first phase. It eliminated all internal border checks inside the Schengen Area and formed the line between internal and external affairs in the European Union policy. This phase of externalisation mostly involves the adoption of the essential policies and treaties that have become a foundation for later stages of development. The path dependence framework describes this stage as a crucial one since the further set of migration related policies and strategies take their roots from here.

Another key document of the first phase is the controversial Dublin Regulation that played a turning point in the European Union migration policy. It was crucial for the European Union to introduce a safe third country rule in order to initiate return policy and closer external

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<sup>131</sup> Lavenex, 330.

<sup>132</sup> Sandra Lavenex, *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe* (Budapest, Hungary: Central European University Press, 1999), 39–40.

<sup>133</sup> Sandra Lavenex, 'The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies', *JCMS: Journal of Common Market Studies* 39, no. 5 (December 2001): 870–71, <https://doi.org/10.1111/1468-5965.00334>.

cooperation with the migrant sending and transit countries. The safe third country rule specifies that a person can be transferred to a third country as long as it respects human rights and provides safety for refugees. Consequently, these efforts led to negotiating readmission obligations with neighbouring non-EU countries that were regarded as ‘safe countries’. Dublin Regulation also stated that a migrant’s first country of arrival would take the responsibility for handling the asylum application. Obviously, this provision put much pressure on the Member States in the frontlines and led to an unbalanced distribution of asylum applicants among them. Especially after the EU-Turkey deal, the frontline Member States were particularly overburdened like in the case of Greece and Italy. The Dublin Regulation and Convention were reviewed several times to meet the challenges but they caused a string of multi-level debates because it was considered as problematic to enforce and it might boost irregular migration.<sup>134</sup> On top of that it was argued that Dublin Regulation might fall short of protecting migrants’ rights. So, the 2015 refugee crisis forced the European Union to negotiate a new comprehensive strategy and the New Pact on Migration and Asylum was adopted in 2020.

Other considerable events during the first phase included the adoption of the Amsterdam Treaty in 1997, the Summit of European Council in Tampere, and the inclusion of the Schengen Agreement into the European Union *acquis communautaire* in 1999. Among them, the Amsterdam Treaty is noteworthy since it transferred migration and asylum matters to the European Union mandate and increased the European Commission’s role in this area.<sup>135</sup> Moreover, the practical outcomes of the Schengen Agreement – free movement of people, goods and capital – started to be regulated on a supranational level by the European Union instead of the Member States separately. These changes can be considered as the first steps in the process of institutionalisation of externalisation and establishing the legal framework for further developments.

Following that, the Summit of the European Council in Tampere (1999) established the Common European Asylum System to ensure that “nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.”<sup>136</sup> Tampere meeting presented operational specifics and the provisions of the Amsterdam Treaty concerning the external migration policy

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<sup>134</sup> Blanca Garcés-Mascareñas, ‘Why Dublin “Doesn’t Work”’, Barcelona Centre for International Affairs, November 2015, [http://www.cidob.org/en/publications/publication\\_series/notes\\_internacionales/n1\\_135\\_por\\_que\\_dublin\\_no\\_funciona/why\\_dublin\\_doesn\\_t\\_work](http://www.cidob.org/en/publications/publication_series/notes_internacionales/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work).

<sup>135</sup> ‘Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts’ 40, no. C 340 (10 November 1997): 30–31.

<sup>136</sup> ‘Tampere Presidency Conclusions’.

were converted into more specific practice with the formation of the Common European Asylum System. The Presidency Conclusions stated that the Common European Asylum System would result “in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status.”<sup>137</sup> One can argue that this system contributed to the formation of common databases and frameworks in various migration related spheres ranging from recording asylum applicants’ biometric data to sharing information on an intergovernmental level.

Later in 2002, during the Seville Summit, it was determined that “in respect of any new agreement, returns to third countries would be an integral part of the negotiation on all aspects of the agreement”.<sup>138</sup> A range of beneficial programmes were launched to encourage third countries to sign cooperation agreements which enabled the European Union to implement readmission mechanisms with them. These events support the argument about evolution of two distinct migration management strategies. One is ‘remote control’ which is a set of preventive measures based on security related doctrine. Second strategy is ‘root cause’ that relies on decreasing the push factors in the source countries through development aids and capacity building programmes.

#### **4.1.2 Emergence of the General Frame in External Action**

The first phase of externalisation established the legal and institutional frameworks that led to the second phase which can be characterised with the intensification of bilateral cooperation with third countries. The second phase also enriched the set of externalisation related policies with the European Neighbourhood Policy, the Global Approach to Migration and Mobility, the EU Return Directive and the Mobility Partnerships.

Following the mutual interest and advantage of the European Union and its Eastern and Southern neighbours, the European Neighbourhood Policy was announced in 2004 which shared the principles of promoting democracy and human rights, respect for the rule of law, and social cohesion. One of the three joint priorities for cooperation in the European

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<sup>137</sup> ‘Tampere Presidency Conclusions’.

<sup>138</sup> ‘Seville Summit’, European Parliament, 24 June 2002, <https://api.parliament.uk/historic-hansard/commons/2002/jun/24/european-council-seville>.

Neighbourhood Policy was migration and mobility.<sup>139</sup> The European Neighbourhood Policy was adopted following the European Union enlargement in 2004 so one of its main purposes was to respond to the possible migratory pressure from the south and east. One of the initial steps in this framework was the Barcelona Process<sup>140</sup>, which also called for dialogue and regional cooperation with the neighbouring countries in the Mediterranean that were considered as prospective source or transit countries. Here we can observe that the waves of enlargement expanded the scope of the European Union's external borders. Since the Schengen Agreement abolished the internal borders, there was a strong need to keep the external borders secure. It can be assumed that the European Union expected from the European Neighbourhood Policy to convert the neighbouring countries into more friendly and like-minded ones by promoting democracy and increasing trade.

However, the European Neighbourhood Policy could not meet many expectations, at least it did not provide many friends on the external borders. The following years showed that the neighbouring countries of the European Union started getting impacted by the crisis in the Middle East.<sup>141</sup> Furthermore, Eastern Europe was under Russian threat and soon the Ukraine war started following Moscow's annexation of Crimea in 2014.<sup>142</sup> In addition, the European Neighbourhood Policy advanced a concept of neighbourhood "the constituting elements of which continue to be marked by enormous political, socio-economic, cultural and security-related differences rather than by commonalities that would justify their inclusion into one overarching policy framework."<sup>143</sup> The European Neighbourhood Policy partially failed since it aimed to foster economic integration and promote political stability in neighbouring countries.<sup>144</sup>

Simultaneously, the Global Approach to Migration was launched in 2005 and further improved in 2007 and 2008. It is a general framework for the European Union's external migration policy

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<sup>139</sup> 'European Neighbourhood Policy', The European External Action Service, 29 July 2021, [https://www.eeas.europa.eu/eeas/european-neighbourhood-policy\\_en](https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en).

<sup>140</sup> 'Euro-Mediterranean Summit of Barcelona. What Is the Barcelona Process?', EuroMed Barcelona, 2005, <https://euromedbarcelona.org/EN/ProcesoBarcelona/QueEsElProceso/paginaprocesodebarcelona.html>.

<sup>141</sup> Niklas Bremberg, 'Making Sense of the EU's Response to the Arab Uprisings: Foreign Policy Practice at Times of Crisis', *European Security* 25, no. 4 (October 2016): 429, <https://doi.org/10.1080/09662839.2016.1236019>.

<sup>142</sup> 'Conflict in Ukraine', Global Conflict Tracker, The Council on Foreign Relations, 12 May 2022, <https://cfr.org/global-conflict-tracker/conflict/conflict-ukraine>.

<sup>143</sup> Tobias Schumacher, 'The European Neighbourhood Policy: The Challenge of Demarcating a Complex and Contested Field of Study', in *The Routledge Handbook on the European Neighbourhood Policy*, 1st ed. (London: Routledge, 2018), 6.

<sup>144</sup> Nona Tatiashvili, 'The EaP: A Failure of the European Neighbourhood Policy or Sharing a Power Balance in the Neighbourhood?', *CES Working Papers*, Centre for European Studies, 8, no. 3 (2016): 530.

which is based on close cooperation with non-Member State countries and addresses all aspects of migration and mobility challenges in an cohesive, systematic, and objective manner.<sup>145</sup> Later in 2011, the European Commission proposed to revise this policy framework to meet the challenges of changing migration trends and make it “more strategic and more efficient, with stronger links and alignment between relevant EU policy areas and between the external and internal dimensions of those policies.”<sup>146</sup> This is how the Global Approach to Migration and Mobility was re-designed and implemented.

The European Council’s initiative also led the European Commission to launch a new external mechanism under the Global Approach to Migration and Mobility. The so-called Mobility Partnerships are one of the main mechanisms the European Union and its Member States have tried to deploy into the relations with important migrant-sending countries in both Africa and Eastern Europe during the past several years.

The Mobility Partnerships with third countries are designed “to better manage migration flows, and in particular to fight illegal migration, in partnership with the EU, in exchange for enhanced possibilities of mobility between their countries and the EU for their citizens, in terms of legal migration opportunities and of short term movements.”<sup>147</sup> The Mobility Partnerships came to light following several policy trends at the European Union level. Firstly, the continuing international mixed migration flows made the European Union collaborate with third countries. The emerging importance of such cooperation with third countries was highlighted in many high-level supranational meetings including Tampere (1999).<sup>148</sup> The European Parliament resolution on the European Union Common Immigration Policy stressed that third countries should “play an active part in helping to manage the migration flows, stem illegal immigration and set up effective information campaigns on the conditions in the recipient countries of the European Union including the criteria for obtaining asylum.”<sup>149</sup> Secondly, the European Union had to motivate third countries with some rewards for their cooperation since those involved

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<sup>145</sup> ‘Global Approach to Migration and Mobility (GAMM)’, Glossary, European Commission, accessed 9 July 2022, [https://home-affairs.ec.europa.eu/pages/glossary/global-approach-migration-and-mobility-gamm\\_en](https://home-affairs.ec.europa.eu/pages/glossary/global-approach-migration-and-mobility-gamm_en).

<sup>146</sup> European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Global Approach to Migration and Mobility’, COM(2011) 743 final (2011), 3.

<sup>147</sup> ‘Circular Migration and Mobility Partnerships between the European Union and Third Countries’, European Commission, 16 May 2007, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_07\\_197](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_07_197).

<sup>148</sup> Reslow and Vink, ‘Three-Level Games in EU External Migration Policy’, 863.

<sup>149</sup> ‘Motion for a Resolution on the EU Common Immigration Policy’, European Parliament, 25 September 2006, [https://www.europarl.europa.eu/doceo/document/B-6-2006-0520\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-6-2006-0520_EN.html).

third countries were not concerned with the issues of illegal migrants' return and readmission.<sup>150</sup>

Hence, the European Commission proposed a number of incentives such as visa facilitation, financial support and legal migration opportunities for those third countries within the framework of the Mobility Partnerships.<sup>151</sup> The Mobility Partnerships are more bilateral and adaptable than the regional and multilateral dialogues which reduces the reluctance of third countries to engage with the European Union. However, the incentives granted within the framework of the Mobility Partnerships downplayed the top-down conditionality of the European Union to impose its own interests. This transforms the Mobility Partnerships into conditional partnerships that clearly institutionalise the importance of the European Union's objectives over those of the partner countries.<sup>152</sup> Therefore, the Mobility Partnerships cannot hide that irregular migration and its security concerns still dominate despite outlining third countries as the European Union's equal partners.

This subsection mentioned several important migration policies and strategies of the European Union. They made a significant contribution to the sophistication of the European Union's external migration policies. The observations illustrate a similar pattern in these policies that they mostly continue the priorities of the previous agendas even though they failed to fulfil their objectives. This leads us to presume that the path dependence played a major role in the process of working out new strategies or redesigning the old ones. The following subsection demonstrates the turbulent moments that substantially complicated the development of the externalisation policy and mechanisms.

#### **4.1.3 From the State of Exception to the New Normal**

This sub-section can include many frameworks but following the aim of the research, only the ones that contributed to the externalisation of the European Union migration management are discussed below. The key event of this phase is the mass uprisings of 2011, often called as 'Arab Spring', that caused shockwaves across the Middle East and North Africa increasing the

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<sup>150</sup> Reslow and Vink, 'Three-Level Games in EU External Migration Policy', 863.

<sup>151</sup> European Commission, 'Integrating Migration Issues in the European Union's Relations with Third Countries', COM(2002) 703 final (2002), 41–42, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0703:FIN:EN:PDF>.

<sup>152</sup> Rahel Kunz, Sandra Lavenex, and Marion Panizzon, eds., *Multilayered Migration Governance: The Promise of Partnership*, 1st ed., Routledge Advances in International Relations and Global Politics 89 (New York: Routledge, 2012), 120–22.

irregular arrivals of migrants to the European borders.<sup>153</sup> The sudden surge of irregular migration substantially challenged the European Union's migration and asylum system and revealed its weakness.<sup>154</sup> The Dublin Regulation put pressure on the frontline Member States contributing to an unequal distribution of migrants throughout the Union. The Member States' responses to this crisis differed from one another but the migration issues dominated the top of the European Union's political priority list. Particularly, the migration pressure at the borders generated a set of serious problems for the European Union's migration and asylum system. This led the EU policymakers to focus more on the external dimension of migration management.

The European Commission proposed the European Agenda on Migration in 2015 emphasising that "emergency measures have been necessary because the collective European policy on the matter has fallen short."<sup>155</sup> The European Agenda on Migration was designed in response to the sudden surge in asylum seeker flows to the European Union. The Agenda deploys a mix of protective and preventive approaches. On the one hand, it advocates the strengthening of border surveillance and management organisations such as FRONTEX. On the other hand, decreasing the push factors in third countries that lead to irregular migration through development programmes and financial aids.

The European Agenda on Migration consists of four pillars:

1. Reduce incentives for irregular migration. This pillar includes eliminating human trafficking; improving the European Union's return system;
2. Better manage external borders. This pillar includes increasing the role and capacity of Frontex; integrating smart technologies into the border controls to boost efficiency and capacity building in North African countries to save migrants' lives in dangerous situations;
3. A common asylum policy. This pillar includes renewing the evaluation and monitoring system for the Common European Asylum System; improving the asylum procedures

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<sup>153</sup> '10 Years on from the "Arab Spring"', Amnesty International, 25 February 2021, <https://www.amnesty.org/en/latest/news/2021/02/mena-repression-and-violence-fail-to-stamp-out-arab-activism-10-years-since-mass-uprisings-of-2011/>.

<sup>154</sup> Khalid Koser, 'Migration, Displacement and the Arab Spring: Lessons to Learn', Brookings, 22 March 2012, <https://www.brookings.edu/opinions/migration-displacement-and-the-arab-spring-lessons-to-learn/>.

<sup>155</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Agenda on Migration', COM(2015) 240 final (2015), 2.

and reception conditions; eliminating mishandlings of the asylum system; sponsoring fingerprinting and detection through enhancing biometric databases;

4. A new policy on legal migration. This pillar includes promoting a platform for dialogue on economic migration; funding the migrant integration policy and initiatives.<sup>156</sup>

The European Agenda on Migration strengthens the established strategy in place since the 1990s to manage migrant and refugee movements before they reach the European Union borders. Analysing these developments, one can see the emergence of similar patterns in most of these policies and strategies. The protective set of measures are being established and implemented more often than preventive ones.

The gradual migration pressure made the European Commission establish the Partnership Frameworks with key third countries in Africa under the European Agenda on Migration that pursue a mix of short and long term actions to increase support for those in need in their countries of origin and transit.<sup>157</sup> According to the European Commission the Partnership Frameworks “should help develop safe and sustainable reception capacities and provide lasting prospects close to home for refugees and their families in third countries affected by migratory pressure” and “...create genuine prospects of resettlement to the EU to discourage irregular and dangerous journeys.”<sup>158</sup> The new framework reinforces the importance of partnership. The European Commission underlines that enhancing cooperative relationships with partners of the European Union helps to address the common issues of migration and development.<sup>159</sup> The key element of the Partnership Frameworks is ‘compacts’ which serves as a political framework for ongoing activities and operational collaboration and brings together various tools and instruments in order to establish an all-inclusive cooperation with third countries. ‘Compacts’ promote a customised strategy for each partner country within the framework based on their distinctive circumstances such as whether it is a country of origin, a transit country, or hosting refugees. This method is planned to deliver clear objectives and share commitments. The

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<sup>156</sup> Elsa Laino, ‘The New EU Agenda on Migration: A Comprehensive Solution or a Set of Stopgap Measures?’ (Brussels: SOLIDAR, June 2015), 2.

<sup>157</sup> European Commission, ‘Migration Partnership Framework – a New Approach to Better Manage Migration’, 2016, 1, [https://www.eeas.europa.eu/sites/default/files/factsheet\\_ec\\_format\\_migration\\_partnership\\_framework\\_update\\_2.pdf](https://www.eeas.europa.eu/sites/default/files/factsheet_ec_format_migration_partnership_framework_update_2.pdf).

<sup>158</sup> European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration’, COM(2016) 385 final (2016), 2, [https://eur-lex.europa.eu/resource.html?uri=cellar:763f0d11-2d86-11e6-b497-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:763f0d11-2d86-11e6-b497-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>159</sup> European Commission, Migration Partnership Framework – a New Approach to Better Manage Migration, 2.

compacts incorporate many policy instruments, such as trade, security, mobility, and development policy which can be adjusted to particular circumstances depending on the country by the European Union Member States.

Therefore, the short-term objectives of the compacts are set to (1) save lives in the Mediterranean sea, (2) increase the return rates to transit and source countries, (3) keep potential migrants and refugees close to their home countries and prevent illegal arrivals. The long-term objectives of the Partnership Framework are defined as (1) addressing the root causes of irregular migration by supporting third countries on a social and economic level, (2) creating more opportunities for potential migrants in their home countries by promoting sustainable development.<sup>160</sup> As it is claimed before, this migration management mechanism of the European Union also shows the signs of the path dependence. The critical conditions at times of the refugee crisis made the EU policy makers agree on minimal terms to temporarily address the situation thus ‘failing forward’ for the next round of new frameworks and strategies.

In general, the Partnership Framework may not have been effective for several reasons. Firstly, a big part of the European Union’s migration management policies is based on the argument that development halts migration.<sup>161</sup> In other words, when a source country is developed through financial aids and capacity building programmes, irregular migration will be curbed but this idea is debated. According to Cummings and her colleagues, there is a certain link between development and mobility, whereby access to resources and education increase people’s mobility making them more informed.<sup>162</sup> Secondly, the African countries are already suffering by irregular migration more than European countries so the readmission agreements may cost them more than the benefits of financial assistance. In any case, readmission agreements require a third country to agree to accept back both its own citizens and those who have passed through it on their way to the European Union. In fact, some countries may not be affected negatively when their citizens leave whether legally or illegally since they may become beneficial for the country in the long run. For example, remittances are a significant part of the economies of many countries, and they may increase as a result of migration.

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<sup>160</sup> Communication from the Commission on Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration, 5–6.

<sup>161</sup> Clare Castillejo, *The EU Migration Partnership Framework: Time for a Rethink?*, Discussion Paper 28/2017 (Bonn: German Development Institute, 2017), 2.

<sup>162</sup> Clare Cummings et al., ‘Why People Move: Understanding the Drivers and Trends of Migration to Europe’ (London: Overseas Development Institute, December 2015), 28–29, <https://assets.publishing.service.gov.uk/media/582594aead915d7ad5000022/understanding-drivers-migration-Europe.pdf>.

Migration also reduces unemployment statistics.<sup>163</sup> Thirdly, African countries may have greater bargaining capacity than they had in the past due to the European Union's internal division and desperate interest for closer cooperation with third countries on readmission.

Another important Summit on Migration between European and African Heads of State and Government takes place in Valletta, Malta to continue partnership and reinforce new action plans. The Summit leads to the Joint Valletta Action Plan which outlines a number of objectives to enhance migration governance between Europe and Africa.<sup>164</sup> The Joint Valletta Action Plan is adopted as the regional framework for assessing migration policy and it is divided into five areas, each of which deals with a particular matter:

1. Development benefits of migration and addressing root causes of irregular migration;
2. Legal migration and mobility;
3. Protection and asylum;
4. Prevention of and fight against irregular migration, migrant smuggling and trafficking in human beings;
5. Return, readmission and reintegration.<sup>165</sup>

The European Union Emergency Trust Fund for Africa was established by European and African countries at the Valletta Summit on Migration in 2015.<sup>166</sup> The Emergency Trust Fund was formed in response to the refugee crisis and the pressing challenges of irregular migration. The European Union Emergency Trust Fund aims to provide a comprehensive and coordinated response to the sources of instability and irregular migration. It combines resources from the European Union and other donors to enable the funding of tailored projects across particular areas of focus in a rapid and effective manner. The Emergency Trust Fund for Africa was expected to boost the European Union's cooperation on migration by establishing a platform to strengthen political engagement and dialogue with partner countries in Africa and enhance the knowledge base to better recognise the dynamics and drivers of migration.

The European Union Emergency Trust Fund for Africa places the needs of marginalised and vulnerable populations first. The primary target groups are migrants and forcefully displaced persons as well as those who have been the victims of human-trafficking and migrant

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<sup>163</sup> Kunz, Lavenex, and Panizzon, *Multilayered Migration Governance*, 214.

<sup>164</sup> 'JVAP – Joint Valletta Action Plan', November 2015, <https://www.jvapfollowup.org/jvap/>.

<sup>165</sup> Ibid.

<sup>166</sup> 'EU Emergency Trust Fund for Africa', European Commission, 2015, [https://ec.europa.eu/trustfundforafrica/content/about\\_en](https://ec.europa.eu/trustfundforafrica/content/about_en).

smuggling. The local authorities and civil society organisations also receive different forms of support including capacity building and training activities.<sup>167</sup> The yearly reports are available since 2016 but it is early to judge the progress since the investments into tackling the root causes produce results slowly.

This subsection discussed some of the key external migration management policies and frameworks of the third phase. The observations show that comprehensive yet tailored external policies of the European Union to manage irregular migration and refugee problems develop around the initial priorities set during the first phase. The core elements have not changed much during this time but more focused on externalising the management tools to third countries. Following section evaluates the most recent migration management strategy of the European Union. The New Pact on Migration and Asylum is the focus of the current study and externalisation dimension of the European Union is established more explicitly which caused a wide array of resonance by different migration stakeholders including European-level Civil Society Organisations.

## **4.2 The New Pact – Complex External Migration Framework**

Previous sections slightly highlighted the impact of the refugee crisis of 2015-2016. That crisis exposed the fundamental weaknesses of the European Union along with the complexity of handling the situations where different Member States are affected in different ways. The crisis also uncovered serious concerns of the Member States and highlighted divisions among them that need to be recognised and overcome. Especially, it emphasised the fact that every action has consequences for others which is an underlying reality for the nature of the European Union as a whole. In general, the latest developments demonstrate that differentiated integration has come to be accepted as a normal pattern at both intergovernmental and supranational levels.

While some Member States continue to struggle with managing their external borders, others must deal with massive land or sea influxes, overcrowded reception facilities, and still-significant unreported migration. In order to manage the interconnection between the policies and decisions made by different Member States, create opportunities in normal times and provide a proper response to challenges in times of crisis, a new stable European framework is needed. Thus, the New Pact on Migration and Asylum was announced by the European Commission on 23 September 2020.<sup>168</sup> This is possibly one of the most debated yet significant

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<sup>167</sup> 'EU Emergency Trust Fund for Africa'.

<sup>168</sup> Communication from the Commission on a New Pact on Migration and Asylum, 1.

documents in the post-refugee crisis period which compiles crisis-management strategies and protocols for the European Union. The framework is announced to introduce a fresh start in migration management however, it aims to harmonise the connections between the internal, external, and border control dimensions more extensively.<sup>169</sup> The New Pact is likely the European Commission's most comprehensive effort to address the opportunities and challenges associated with migration in Europe.

The New Pact advances a comprehensive strategy that combines border management, integration, asylum, and migration policy acknowledging that growth in all these areas is necessary for overall effectiveness.

Although, many interpreted the announcement of the New Pact as a replacement for the dysfunctional Dublin system, the new framework in reality focusses on more external dimensions and develops the previous priorities comprehensively.<sup>170</sup> However, before the final document was developed, extensive negotiations took place between the European Union institutions and the Member States. In this sense, the proposed Pact is neither the beginning nor the end of a process, but rather a significant step in a cooperative endeavour that will continue after its first significant outcome has been made public.<sup>171</sup> So, one can argue that the New Pact is the practical continuation of the previous strategies based on a path dependence theoretical framework.

The outcomes of the inter-institutional discussions after the European Commission's 2016 proposals to reform the Common European Asylum System have helped to develop the New Pact. The European Commission mentions that compromises previously made on the existing proposals will be preserved, and new elements will be added to provide the balance required in a framework that combines all components of asylum and migration policy. By effectively implementing the New Pact, the results will bridge gaps between the different levels of impact experienced by various Member States and foster mutual trust.<sup>172</sup> Although it depends on how closely the different Member States follow the new framework.

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<sup>169</sup> Michael Spindelegger, 'Understanding the New Pact on Migration and Asylum as an Opportunity', Euractiv, 2 October 2020, <https://www.euractiv.com/section/justice-home-affairs/opinion/understanding-the-new-pact-on-migration-and-asylum-as-an-opportunity/>.

<sup>170</sup> Anna Schwarz, Eva van de Rakt, and Zora Siebert, 'Migration and Asylum Policy à La Carte: A Free Hand for the Obstructionists', Heinrich-Böll-Stiftung, 14 October 2020, <https://eu.boell.org/en/2020/09/30/migration-and-asylum-policy-la-carte-free-hand-obstructionists>.

<sup>171</sup> Spindelegger, 'Understanding the New Pact on Migration and Asylum as an Opportunity'.

<sup>172</sup> European Commission, *New Pact on Migration and Asylum*, 2020, 2, <https://data.europa.eu/doi/10.2775/008578>.

Generally, the New Pact on Migration and Asylum consists of the following components:<sup>173</sup>

- robust and fair management of external borders, including identity, health and security checks;
- fair and efficient asylum rules, streamlining procedures on asylum and return;
- a new solidarity mechanism for situations of search and rescue, pressure and crisis;
- stronger foresight, crisis preparedness and response;
- an effective return policy and an EU-coordinated approach to returns;
- comprehensive governance at EU level for better management and implementation of asylum and migration policies;
- mutually beneficial partnerships with key third countries of origin and transit;
- developing sustainable legal pathways for those in need of protection and to attract talent to the EU;
- supporting effective integration policies.<sup>174</sup>

Being criticised for its strong emphasis on migration management, the New Pact received many concerns from a number of civil society organisations about possible social, legal and humanitarian consequences for migrants.<sup>174</sup> These activist organisations are particularly concerned about the New Pact’s pre-entry screening and other situational checks at borders and whether they also address the migrants’ conditions and vulnerabilities as a result. Some organisations like Human Rights Watch argue that the New Pact has two major weaknesses. The first one is the idea that the majority of arrivals do not qualify for international protection and the second one is transforming asylum procedures into a fast and effective practice. Therefore, “the Pact risks exacerbating the focus on externalisation, deterrence, containment and return”<sup>175</sup> and this could result in another round of ‘failing forward’ decision-making process.

#### **4.2.1 Deepening Partnerships with Key Countries of Origin and Transit**

Externalisation of migration and asylum policy is one of two arguably central pillars of the New Pact. The second one is deepening cooperation with third countries in this field. Despite

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<sup>173</sup> Communication from the Commission on a New Pact on Migration and Asylum, 2.

<sup>174</sup> Violeta Moreno-Lax, ‘A New Common European Approach to Search and Rescue? Entrenching Proactive Containment – EU Immigration and Asylum Law and Policy’, *EU Immigration and Asylum Law and Policy* (blog), 3 February 2021, <https://eumigrationlawblog.eu/a-new-common-european-approach-to-search-and-rescue-entrenching-proactive-containment/>.

<sup>175</sup> ‘The Pact on Migration and Asylum’, Human Rights Watch, 8 October 2020, <https://www.hrw.org/news/2020/10/08/pact-migration-and-asylum>.

its ambiguity, the New Pact begins a new period for the European Union's external migration and asylum policy. The European Commission and the European External Action Service play a crucial role in this while being in charge of leading and coordinating for the benefit of all parties. The New Pact emphasises the roles of multiple actors, including the European Union institutions, the Member States and third nations relying on the 'three-level game' system that is previously mentioned.

The foundation of ensuring the secure and efficient migration management is the development of extensive, tailored, and win-win partnerships with migrant transit and source countries. This has been one of the top priorities for the European Commission in recent years and it is both a crucial element of the New Pact on Migration and Asylum and its fundamental purpose. There are already well-established communication and cooperation on migration with some important partners. In order to enhance those tailored partnerships on migration based on the existing frameworks, significant efforts have been made focusing on the priorities that the European Union and its partners have mutually defined.

The official documents report that the New Pact includes protecting those in need, refugees and migrants who are in danger, and supporting host countries as well. The European Union and its Member States provide significant humanitarian aid to refugees, asylum seekers, internally displaced people, and host communities around the globe. Those who have been forcibly displaced have particularly benefited from the European Union development assistance which supports their livelihoods and safety.<sup>176</sup> Working continuously with partners to advance initiatives on conflict avoidance, the preservation of fundamental rights, economic and social development, and climate action is necessary to address the main causes of irregular migration and forced displacement.<sup>177</sup> These preventive measures to address the root causes of irregular migration via development will prove more effective when third countries cooperate actively.

Another main objective of the European Union cooperation with third countries is to encourage the formation of proper structures for migration governance.<sup>178</sup> When this objective is adequately developed and implemented, it will contribute to the protection of the migrants'

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<sup>176</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum', COM(2021) 590 final (2021), 16, <https://ec.europa.eu/info/sites/default/files/report-migration-asylum.pdf>.

<sup>177</sup> Communication from the Commission on the Report on Migration and Asylum, 18.

<sup>178</sup> Communication from the Commission on the Report on Migration and Asylum, 18.

rights and support a systematic migration management policy of the third countries involved. Developing capacity building on border management is a key area of effective migration governance.<sup>179</sup> These efforts contribute to the prevention of irregular migration and combat migrant smuggling more effectively for the interests of the European Union and third countries.

The return policy is one of the most fundamental elements of this framework with regard to third countries. It attempts to strengthen return governance structures and improve return processes. In this regard, the New Pact highlights the role of Frontex in conducting return operations and proposes a new instrument – return sponsorship. It emphasises the importance of readmissions and cooperation with third countries in returning irregular migrants. The proposed return system of the New Pact introduces new screening methods at the border<sup>180</sup> which may increase detentions as well. The Member States have an option to choose between sponsoring return or admitting the applicants. This new framework is considered to foster effective return and readmission cooperation with third countries as a part of an evolving solidarity mechanism. That readmission and return may continue to be important components in the migration policy of the European Union.

Also, the New Pact states to provide material assistance to help with voluntary returns or facilitating policy negotiations between third countries and the Member States concerning return programmes.<sup>181</sup> Therefore, the New Pact accentuates the role of third countries when it comes to return and readmission agreements. It argues that, in order to enhance cooperation, the European Union needs to combine its objectives on migration management with other matters of shared interest, in a tailored approach, taking into account the current issues with finalising and executing readmission agreements.<sup>182</sup> The New Pact mentions mobilising “all the relevant tools and policies at its disposal to incentivise cooperation on readmission including better linkages with other development initiatives and national strategies, aiming to build partner countries’ capacity and ownership”<sup>183</sup> in terms of incentives. The New Pact also underlines that “the EU should mobilise all its relevant policies, tools and instruments to enhance cooperation on readmission.”<sup>184</sup> This framework reinforces the established incentives in previous documents such as the visa facilitation.

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<sup>179</sup> Communication from the Commission on the Report on Migration and Asylum, 19.

<sup>180</sup> Communication from the Commission on a New Pact on Migration and Asylum, 4.

<sup>181</sup> *Ibid.*, 8.

<sup>182</sup> *Ibid.*, 17.

<sup>183</sup> ‘New Pact on Migration and Asylum: Questions and Answers’.

<sup>184</sup> *Ibid.*

The European Commission is expected to be open for cooperation with third countries, since the New Pact “foresees the possibility for the Commission to identify additional measures, including in other policy areas or funding instruments to incentivise and improve cooperation with third countries to facilitate return and readmission”.<sup>185</sup> It envisions flexible, individually tailored EU-third country cooperation in line with differentiated integration.

Initial impressions show that the New Pact does not actually offer a new strategy for cooperation with third countries. It mostly reinforces the established incentives and tools with more details. It does, however, draw attention to the possibilities for more differentiated cooperation with transit and source countries. The continuous emphasis on “comprehensive, balanced and tailor-made partnerships”<sup>186</sup> entails the assumption that the existing mechanisms for cooperation are unbalanced. There is an ongoing argument about the European Union’s systematic pressure on third countries via bilateral agreements and financial aid which may be close to reality considering how much damage the irregular migration is causing. However, the New Pact underlines that a “tailor-made approach will be based on a joint assessment of the interests of both the European Union and its partner countries. It will rely on a mix of the following aspects, taking into account the specific situation of each partner country or region”.<sup>187</sup> This may be a sign of the European Union’s change of paradigm towards third countries. It can also be seen in the New Pact when referring to the relationship and cooperation with third countries, the terms like ‘tailor-made’, ‘mutual interest’, and ‘more balanced approaches’ are extensively used.

### **4.3 Analysis from the Perspective of Civil Society Organisations**

The goal of this section is to discuss some of the proposals made by CSOs operating at the European-level concerning the New Pact. As it is discussed before, the New Pact seeks to establish a comprehensive framework in terms of border control, asylum system, reception conditions and return for the European Union and its Member States equally using available policy and legislative instruments. The framework attempts to introduce new elements such as accelerated border processes and detention which are widely regarded as establishing a legal foundation for some Member States’ illegal practices towards asylum seekers.<sup>188</sup> Much of the

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<sup>185</sup> ‘New Pact on Migration and Asylum: Questions and Answers’.

<sup>186</sup> ‘The Pact on Migration and Asylum’, 16.

<sup>187</sup> ‘New Pact on Migration and Asylum: Questions and Answers’.

<sup>188</sup> ‘Analysis of the New EU Pact on Migration and Asylum - a “Fresh Start” for Human Rights Violations’ (Brussels: EuroMed Rights, October 2020), 3, [https://euromedrights.org/wp-content/uploads/2020/10/Analysis-of-Asylum-and-Migration-Pact\\_Final\\_Clickable.pdf](https://euromedrights.org/wp-content/uploads/2020/10/Analysis-of-Asylum-and-Migration-Pact_Final_Clickable.pdf).

migration pressure has, until now, been focused on the frontline countries, like Greece and Italy, because newly arrived refugees must seek for asylum in the first country of entry according to the Dublin Regulation. Such a system has led to a serious crisis in the Member States' sense of unity as well as a considerable decline in their confidence in the European Union institutions.<sup>189</sup> As a result, the refugee crisis was essential in the policy change, and the new plan uses a variety of tactics to win back the trust of the Member States.

The New Pact's first goal is to create a uniform asylum policy with modernised procedures to speed up the asylum process. It promotes quicker family reunifications and draws attention to the best interests of the child; it serves as a reminder of the Member States' search and rescue responsibilities and call them not to criminalise humanitarian aid without suggesting a European search and rescue operation initiatives.<sup>190</sup> Second, security, especially at the external border, is heavily stressed in the fight against irregular migration. However, these policy measures are in practice under the pile of security based approaches which makes it ambiguous how they will actually be implemented.

Indeed, many CSOs argue that the New Pact contains numerous components that primarily violate human rights and entirely fail to protect migrants' rights and protection needs, relying mostly on a protective and security-based methods.<sup>191</sup> However, the European Union intends to improve communication and cooperation with third countries in order to return migrants to the countries that are regarded as safe. This is the main strategy the European Union uses to manage the migrant flow. Therefore, externalisation, return sponsorship, and solidarity mechanisms are the primary topics of discussion in the CSOs' proposals.

The discussion of the proposals marks the beginning of what looks to be another lengthy and controversial round of negotiations on the asylum and migration policies of the European Union.<sup>192</sup> Relying on the results of the previous migration related negotiations and decision-making processes, one can claim that the outcomes will be minimally effective to address the existing challenges because finding a common ground that satisfy each Member States' interests is very hard. 'Failing forward' may temporarily establish the minimal solutions in this case. The following subsections will discuss a limited number of CSOs' proposals and their

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<sup>189</sup> Agathe Helluin, "A "New" pact on Migration and Asylum? The European migration policy path-dependency," EUROPEUM Institute for European Policy, September 2021, p.1.

<sup>190</sup> 'Analysis of the New EU Pact on Migration and Asylum - a "Fresh Start" for Human Rights Violations', 5.

<sup>191</sup> Ibid., 5.

<sup>192</sup> 'The Pact on Migration and Asylum'.

policy recommendations. The interpretations are subjective since most of them do not provide their reactions to the New Pact.

#### **4.3.1 Reflections of CSOs to Externalisation in the New Pact**

The Regulation on Asylum and Migration Management (RAMM), which is a cornerstone of the New Pact, establishes return sponsorship under article 55.<sup>193</sup> The European Commission's proposal includes a brand-new component of the solidarity mechanism that acts as a flexible tool for the Member States.<sup>194</sup> The return sponsorship is expected to achieve two key goals. First of all, this component may offer a resolution to the complex problem of responsibility sharing. The willingness of the Member States to take part in returns may increase if they oppose the forced relocation of asylum seekers to their territory, which would relieve strain on the external border of the European Union. Additionally, the initiative is a component of the greater political objective of the European Commission and Member States to raise return rates to safe third countries.

Although the return sponsorship is a new option in the solidarity toolkit, many CSOs operating at the European level have expressed their concerns about it. The European Council on Refugees and Exiles believes that the concept of solidarity, which should be based on mutual support and protection, is distorted by return sponsorship. ECRE opposes enhancing the asylum system by raising the return rates.<sup>195</sup> Additionally, putting return sponsorship into practice will need agreements with third countries, which not all Member States have been able to successfully establish or maintain.

ECRE raises concerns with the provision of the article 55 that states that if a person is still not returned after eight months, the sponsoring Member State should assume the responsibility for them and that the extension of the return process, measures and challenges associated with detention may jeopardise people's fundamental rights.<sup>196</sup> ECRE advises removing the return sponsorship from the solidarity toolkit as a result.<sup>197</sup> Along with other CSOs, Caritas Europa

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<sup>193</sup> ECRE, "ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management," Brussels, February 2021, p.70.

<sup>194</sup> European Commission, 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], COM (2020) 610 final, Brussels, 23.9.2020, p.18-19.

<sup>195</sup> ECRE et al., "Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded," Joint Statement (October 2020).

<sup>196</sup> ECRE, ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management, 71.

<sup>197</sup> Ibid., 72.

and Amnesty International have endorsed this idea.<sup>198</sup> Another recurrent concern is emphasising the return of asylum seeker over their protection. Due to internal political pressure, the Member States mostly see ‘return sponsorship’ as an instrument of solidarity, leaving ‘relocation’ and other choices.

The idea of return sponsorship, according to the Centre for European Policy Studies, is highly dubious because it blurs the line between the Member States’ obligation to uphold the European Union legal standards and potential violations of peoples’ fundamental rights within the context of forced and voluntary expulsion procedures.<sup>199</sup> The New Pact does not take into account the various return policy application and enforcement practices used by Member States, which makes implementing return sponsorship more challenging.

According to ECRE, externalisation is the process through which the European Union seeks to transfer its obligation to provide international protection to the countries outside of its borders.<sup>200</sup> The New Pact’s standout features include enhancing cooperation with transit and source countries through all-encompassing, balanced, and tailored partnerships. Many CSOs, notably ECRE and Europeum, have criticised these elements as being hostile because the most significant body of asylum law focuses on assigning duties to other countries.<sup>201,202</sup>

People seeking asylum in Europe face substantial consequences from the Member States’ incentives to reduce the number of arrivals, which could lead to the use of abusive practices including detention, mistreatment, and even refoulement to other countries. Concerns about the European Union’s desire to increase its collaboration with third nations in order to encourage return rates to safe countries have also been voiced by ECRE, Human Rights Watch, and Caritas Europa.<sup>203</sup> Many asylum seekers are compelled to choose irregular routes because there are not many legal routes available for them. The intention to lessen irregular migration may endanger the right to asylum in the European Union and raise dangers for those who do so.<sup>204</sup>

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<sup>198</sup> ECRE et al., “Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded,” October 2020.

<sup>199</sup> Evelien Brouwer et al., “The European Commission’s legislative proposals in the New Pact on Migration and Asylum,” CEPS, July 2021, p.157.

<sup>200</sup> ECRE, ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management, 11.

<sup>201</sup> Ibid.

<sup>202</sup> Agathe Helluin, “A “New” pact on Migration and Asylum? The European migration policy path-dependency,” EUROPEUM Institute for European Policy, September 2021, p.1.

<sup>203</sup> Amnesty International et al., “The new Pact on Asylum and Migration: An opportunity seized or squandered?” Joint Statement (December 2020): 1.

<sup>204</sup> ECRE, ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management, 14.

CEPS asserts that the New Pact failed to take into account third countries' sovereignty and their potential resistance to comply with the European Union demands, which is frequently motivated by nation- and region-specific economic, social, and political concerns, such as regional integration processes on free movement.<sup>205</sup> This is one of the main issues with externalisation that CEPS brings up. The return and readmission procedures here conflict with the immigration laws of various countries.

An interpretation of the article 80 of the Treaty on the Functioning of the European Union (TFEU), which establishes solidarity and a fair distribution of responsibility as a guiding principle for border controls, asylum, and immigration policies in Chapter 2 of the TFEU, serves as the foundation for the argument on solidarity.<sup>206</sup> The New Pact's 'solidarity mechanism' has been altered to account for a number of circumstances, such as disembarking in response to Search And Rescue, 'migration pressures or risk of pressure', and so-called 'crisis scenarios.' Depending on the situation, the New Pact offers the Member States a wide choice of possibilities besides relocation. Among these choices are return sponsorship, creating capacity in the area of asylum and return, and assistance in the 'external dimension'.<sup>207</sup>

However, the refugee crisis and pressure from migration demonstrated that there is an imbalance in the way that responsibility is shared, with some Member States being more adversely affected and receiving less aid. The parameters for sharing responsibility need to be more thoroughly reformed, according to ECRE, in order to address the system's flaws. Maintaining a system that encourages inequality and then calls for solidarity actions to eliminate it is inherently paradoxical.<sup>208</sup> In order to reduce pressure on the European Union border Member States and foster further cooperation among them, Amnesty International, Human Rights Watch, and Caritas Europa recommend that the initial entrance criterion used to determine which Member State is in charge of processing asylum claims to be changed.<sup>209</sup>

The New Pact, according to Europeum, was intended to replace the divisive Dublin system of responsibility sharing among the Member States with its new solidarity mechanism, but in

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<sup>205</sup> Evelien Brouwer et al., "The European Commission's legislative proposals in the New Pact on Migration and Asylum," CEPS, July 2021, 45.

<sup>206</sup> ECRE, ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management, 50.

<sup>207</sup> Evelien Brouwer et al., "The European Commission's legislative proposals in the New Pact on Migration and Asylum," CEPS, July 2021, 153.

<sup>208</sup> *Ibid.*, 51.

<sup>209</sup> Amnesty International et al., "The new Pact on Asylum and Migration: An opportunity seized or squandered?" Joint Statement (December 2020): 1.

practice, this was not the case. The Dublin Regulation is largely repeated in the RAMM, despite the fact that it is being advertised as a new beginning that will replace it. The Dublin system is not eliminated by the Regulation, rather, only minor modifications are made.<sup>210</sup> As a result, numerous CSOs advise continuing to look for ad hoc solidarity agreements and supporting the first-entry Member States.

#### **4.3.2 Policy Recommendations by CSOs**

This section covers the discourse analysis of the European-level CSOs' proposals regarding the New Pact. Those proposals also make general policy recommendations regarding the shortcomings of the European Union's migration and asylum management. In many cases, those policy recommendations are directed to prevent mistreatment of asylum seekers and improve their conditions in general.

The crises and the European Union's responses to them may have unanticipated harmful impacts on democracy. The national and European legislatures have struggled to deal with the emergence of authoritarian right-wing populism since they have repeatedly been neglected both during and after crises. The legal and administrative institutions intended to safeguard constitutional democracy have deteriorated as a result of democratic backsliding that has occurred in several Member States.<sup>211</sup> This applies to scenarios relating to immigration and asylum as well, therefore analysing CSO proposals at the European level may offer a critical perspective since they have the capacity to keep an eye on policy accountability and provide constructive feedback locally.

Initial set of policy recommendations are related to the status deprivation. The condition known as status deprivation a situation when actors deprive or reject the status of asylum seekers like access to legal position or resources.<sup>212</sup> Caritas urges the authorities involved in the screening process to be well-trained and competent to gather relevant information from asylum seekers since it will have a significant impact on the later stages of the asylum procedures.<sup>213</sup> Status deprivation may occur primarily in the first entry countries. The Churches' Commission for Migrants in Europe (CCME) emphasises that border facilities be appropriately constructed to

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<sup>210</sup> Agathe Helluin, "A "New" pact on Migration and Asylum? The European migration policy path-dependency," EUROPEUM Institute for European Policy, September 2021, 2.

<sup>211</sup> John Erik Fossum, "Europe's Triangular Challenge: Differentiation, Dominance and Democracy" (Oslo, Norway: ARENA, 2019), 3.

<sup>212</sup> Magdalena Góra et al., "Methodology and coding protocol for EU3D textual analysis (Parliamentary debates, media debates and documents(extract))," EU3D, January 2020.

<sup>213</sup> Caritas Europa, "Analysis of the EU Pact on Migration and Asylum," Position Paper (December 9, 2020): 3.

address the needs of vulnerable persons until they are transferred to other locations.<sup>214</sup> CCME also suggests to employ trained officers and ensure that asylum seekers are notified about their rights to “apply for international protection in a language that they understand.”<sup>215</sup>

According to COMECE’s proposal, it is crucial to stop and remove the “criminalization of humanitarian assistance to irregular migrants” and to make clear the “non-penalization of humanitarian activities”.<sup>216</sup> Additionally, COMECE emphasises the establishment of professional help for asylum seekers with special needs, such as medical conditions or mental health concerns. The New Pact should concentrate on expanding safe and legal avenues for people who are fleeing war, conflict, persecution, and other life-threats in their countries of origin, according to Amnesty International. This will contribute positively to the European Union’s asylum system by allowing refugees to reach safe havens without relying on traffickers.<sup>217</sup>

The next round of policy recommendations is about the rights denial or deprivation which is when “persons are denied rights or when rights-holders are stripped of rights, or their rights are ‘less worth’.”<sup>218</sup> The CCME suggests amending the New Pact to explicitly state that the asylum process begins as soon as a person applies for protection, “without waiting for the conclusion of the pre-entry screening.”<sup>219</sup> Following the UNHCR detention rules during the procedures, Caritas Europa reviews the screening period-related paragraphs and suggests changes to “avoid the systematic use of detention during the screening phase.”<sup>220</sup> Additionally, they advise following the UNHCR recommendations and speed up the processing of well-grounded asylum claims.<sup>221</sup> In order to enhance community and private sponsorships, COMECE wants to support and promote projects for community sponsorship as well as other initiatives. This proposal may facilitate complex operations like Search and Rescue.<sup>222</sup> Family reunification should be

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<sup>214</sup> CCME et al, “Comments on Pre-Entry Screening and Border Procedures,” Joint Statement (April 13, 2021): 7.

<sup>215</sup> Ibid.

<sup>216</sup> COMECE, “Statement by the COMECE Working Group on Migration and Asylum on the EU PACT ON MIGRATION AND ASYLUM proposed by the European Commission,” Brussels, December 15, 2020. p.7.

<sup>217</sup> Amnesty International et al., “The new Pact on Asylum and Migration: An opportunity seized or squandered?” Joint Statement (December 2020): 3.

<sup>218</sup> Magdalena Góra et al., “Methodology and coding protocol for EU3D textual analysis (Parliamentary debates, media debates and documents(extract)),” EU3D, January 2020.

<sup>219</sup> CCME et al, “Comments on Pre-Entry Screening and Border Procedures,” Joint Statement (April 13, 2021): 7.

<sup>220</sup> Caritas Europa, “Analysis of the EU Pact on Migration and Asylum,” Position Paper (December 9, 2020): 3.

<sup>221</sup> Ibid., 5.

<sup>222</sup> COMECE, “Statement by the COMECE Working Group on Migration and Asylum on the EU Pact on Migration and Asylum proposed by the European Commission,” Brussels, December 15, 2020. p.3.

prioritised according to ECRE and Amnesty International<sup>223</sup> because it will help to prevent the denial or deprivation of rights.

The following policy recommendations refer to the term ‘illicit hierarchy’ which is a particular type of hierarchy. For example, it is considered an illegitimate hierarchy when an institutional arrangement makes binding decisions without having full authority and/or without legal authorization.<sup>224</sup> This section analyses instances of illicit hierarchy in the European Union’s dealings with non-EU countries regarding the migration and asylum management. The analysis of various CSOs’ proposals to the New Pact reveals their issues, which are indirectly related to the illicit hierarchy.

Caritas advises avoiding conditionality and relying on an equal collaboration to reflect each side’s interests and priorities in order to sustain beneficial relationships with third nations on issues of immigration and asylum.<sup>225</sup> Development assistance should not be used to advance the security and immigration goals of the European Union, such as reducing migration. Instead, financial assistance should be used to combat inequality and poverty in partner countries in line with their national plans.<sup>226</sup> Similar recommendations were made by COMECE, which calls for fostering partnerships that benefit both parties and foreign assistance that concentrates on root causes including poverty, human rights, and insecurity in key third countries.<sup>227</sup> Additionally, COMECE advises maintaining the legal channels that let experts from foreign countries to continue providing services to residents of their home countries, notably in the health and sanitation sectors.<sup>228</sup>

According to Amnesty International and ECRE’s recommendations, the European Union should concentrate on enhancing the migration and asylum systems in Europe rather than

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<sup>223</sup> Amnesty International et al., “The new Pact on Asylum and Migration: An opportunity seized or squandered?” Joint Statement (December 2020): 2.

<sup>224</sup> Magdalena Góra et al., “Methodology and coding protocol for EU3D textual analysis (Parliamentary debates, media debates and documents(extract)),” EU3D, January 2020.

<sup>225</sup> Caritas Europa, “Analysis of the EU Pact on Migration and Asylum,” Position Paper (December 9, 2020): 14.

<sup>226</sup> Ibid.

<sup>227</sup> COMECE, “Statement by the COMECE Working Group on Migration and Asylum on the EU PACT ON MIGRATION AND ASYLUM proposed by the European Commission,” Brussels, December 15, 2020. 5.

<sup>228</sup> Ibid.

externalising its obligations to third countries through various agreements that weaken the Union's core principles of the rule of law and human rights.<sup>229,230</sup>

In addition to the proposals of the CSOs, there are some recommendations by the author as well. First of all, the European Union should make sure that a safe third country has to provide the returnees with refugee status or equivalent to guarantee their fair protection and access to legal sources despite their nationalities. Also, a safe third country has to ensure that refugees are not returned to their country which is under war or other violence where people's life is threatened. Since the refugees are mostly in a vulnerable condition, the readmitting country should provide them with access to the labour market and protect their right to work. The respective countries should also guarantee an adequate access to health and education to the recognised refugees as well as the ones under temporary protection.

Moreover, the European Union should not delegate its responsibilities to third countries making them coastguards or border guards to stop people leaving their countries in search of asylum. Externalising the border management may be effective for the interests of the European Union but the consequences for the potential refugees are grave. The development aid to partner countries through the EU-Africa Trust Fund and other mechanisms under the Partnership Framework should be solely used to assist the countries to build the capacity to protect human rights and develop more opportunities for people. These funds should not be directed to building frameworks to prevent individuals from leaving their countries.

Finally, the European Union should enhance a mechanism to distribute asylum claims equally and assign them based on each Member State's capacity. Placing responsibility for examining asylum claims to the first country of arrival based on Dublin Regulation should be changed.

This subsection has discussed some of the many policy recommendations made by the CSOs as well as the author regarding the migration and asylum policy of the European Union in general and the New Pact in particular. Despite the general remarks, special research should be conducted to study them extensively.

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<sup>229</sup> Amnesty International et al., "The new Pact on Asylum and Migration: An opportunity seized or squandered?" Joint Statement (December 2020): 2.

<sup>230</sup> ECRE, "ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management," Brussels, February 2021, 14.

#### 4.4 Future of the EU Externalisation Policy

The purpose of this study is not to predict the future of the externalisation of the European Union migration policy. But given that we are about to enter a new period of uncertainty, it is normal to speculate which aspects of the current stage of externalisation are more likely to persist into the future and which are more specific and restricted.

We can argue that the ‘external dimension’ of the European Union migration policy is still in the development stage, and no clear pattern has yet formed. The European Union is still having trouble deciding which modes of collaboration and which legislative tools will best achieve the diverse objectives of its migration policy. As a result, prevention and externalisation of control mechanisms have been combined in cooperation up to this point. The two approaches have very different presumptions about how to affect the levels and patterns of migration and refugee flows, and they will have different effects not only on issues of migration management but also on refugee protection, development, and stability in sending and transit countries, as well as on relations between the European Union and other third countries. Therefore, it is important to determine which pattern of cooperation is likely to emerge as the dominant one.<sup>231</sup> It is crucial to consider which type of cooperation is more likely to prevail in the future for these reasons.

The European Commission’s involvement may decline if future European Council summits fail to demonstrate a commitment to creating the preventive agenda. Without more funding or pressure from the European Council, the European Commission would lack motives to refocus development goals. The end effect would be a return to the concentration on migration control mechanisms, which may be ideal for most Member States but does little to address the difficult policy challenges that migration management raises.<sup>232</sup> Taking into account one of the priorities of the European Union in migration management is protecting the security of the Schengen Area, the above-mentioned argument sounds solid.

The European Commission always calls the Member States to “make the EU’s migration policy truly future-proof, effective and resilient”<sup>233</sup> in order to be well-prepared for any future migration challenges including the risk of potential new migration crisis. Migration is not portrayed as a security concern that calls for extreme measures in the present. Instead, the

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<sup>231</sup> Boswell, ‘The “External Dimension” of EU Immigration and Asylum Policy’, 620.

<sup>232</sup> Boswell, 638.

<sup>233</sup> ‘European Agenda on Migration Four Years on: Marked Progress Needs Consolidating in Face of Volatile Situation’, European Commission, 16 October 2019, [https://home-affairs.ec.europa.eu/news/european-agenda-migration-four-years-marked-progress-needs-consolidating-face-volatile-situation-2019-10-16\\_en](https://home-affairs.ec.europa.eu/news/european-agenda-migration-four-years-marked-progress-needs-consolidating-face-volatile-situation-2019-10-16_en).

discourse portrays migration as a risk for which the European Union must be ready in the future. The European Union rhetoric in this context advocates and justifies long-term protective measures like “increased resources and powers that will enable the [European Border and Coast Guard Agency] to provide constant and reliable support [...] in protecting the EU’s external borders”.<sup>234</sup> Additionally, by making claims about the need to be “equipped to face the future when it comes to migration challenges”<sup>235</sup>, it becomes clear that migration will continue to be a concern and be perceived as a security threat in the future. Therefore, the European Union considers that measures must be put in place now in order to be able to manage those risks in the future.

This section lightly touches the future of the externalisation dimension of the European Union migration policy although this topic requires a lengthy round of studies. The observations show that migration is not considered as an immediate security concern demanding extraordinary measures so far. Instead, the phenomenon is framed as a potential risk that must be constantly controlled in order to handle the unexpected crisis in the future. However, it is quite difficult to make conclusions since the nature of migration is dynamic and it can cause a chain of crisis triggered by a small-scale event.

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<sup>234</sup> ‘State of the Union 2018: Remarks of Commissioner Avramopoulos on New Measures for Stronger EU Borders and Solidarity on Migration’, European Commission, 13 September 2018, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_18\\_5765](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_18_5765).

<sup>235</sup> ‘EAM Progress Report: Remarks by Commissioner Avramopoulos’, European Commission, 16 October 2019, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_19\\_6112](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6112).

## Chapter 5.

### CONCLUSION

There is a gradual scholarly interest in the European Union's increasing efforts to reduce illegal migration through external measures. Migration management is progressively being delegated to third countries, and under the pretext of a comprehensive strategy, a variety of actors with European Union funding implement projects to control human mobility. The externalisation of migration management affects how we view borders, sovereignty, and accountability, among other things, and may make migrants more vulnerable. This is significant from a democratic standpoint because the democratic control mechanisms are weakened if control mechanisms for the European Union can be disabled by externalisation.

Therefore the research aim is set to explore the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum from the perspective of the European-level CSOs. Consequently, the research question is the following: *how do the European-level CSOs working in the field of migration and asylum evaluate the externalisation dimension of the European Union migration policy in the New Pact on Migration and Asylum?* To answer the research question, the thesis analysed official European Union documents, mainly the New Pact on Migration and Asylum and other relative CSOs' proposals by adopting a qualitative approach using a critical discourse analysis.

The analysis reveals interesting yet controversial results. Based on suggestions made by CSOs operating at the European level, the thesis examines the trends of the European Union's migration and refugee policy developments in the New Pact. It focuses on how various European-level CSOs perceive, evaluate, and formulate their responses to the New Pact. The study intends to examine how CSOs working at the European level in the fields of migration and asylum assess the evolution of the European Union migration and asylum policy, focusing particularly on the New Pact components like 'return sponsorship', 'externalisation', and 'solidarity'.

Although the CSOs are concerned about the new tools included in the New Pact that focus on externalising borders and responsibilities to third countries, they see it as an opportunity to improve asylum policy and procedures in Europe and contribute to the establishment of more channels that are safe and legal. Therefore, their recommendations for the New Pact are meant

to highlight these problematic components and advise on improving the positive ones. The great focus the European Union is placing on collaboration with countries of origin and transit to stop illegal migration and manage the flow of asylum seekers is one of the common concerns among CSOs. Some of the general recommendations suggested by the CSOs include fostering relationships based on shared interests and increasing legal pathways for regular migration with third countries. More support from other Member States for the first entry countries has been suggested by the CSOs, despite the fact that some of the new mechanisms, such as 'return sponsorship', have drawn harsh criticism for their potential negative effects on the rights and status of asylum seekers.

Regarding criticised practices, it was demonstrated how the European Commission implements measures of protection and regulation in the process of externalising migration management. On the one hand, initiatives in partner countries are supported financially to train security forces and strengthen border controls, while other projects are put into action to provide potential migrants with work opportunities. It was demonstrated how the European Commission frames its strategy by caring for migrants while imposing control mechanisms on the other hand. Despite the New Pact's priority is to prevent illegal entry to European Union territory, it continues to support the idea of providing financial aid to key partner countries. This demonstrates the tension that exists between support and control but it also informs us how the European Commission exercises its power that enables it to portray itself as a comprehensive caring actor. So, by portraying irregular migration as an emergency problem for the European Union and its Member States, the foundation to adopt protective policies and stricter measures is established.

The theoretical frameworks that are employed to discuss the externalisation dimension of the European Union migration and asylum policy, particularly the New Pact of Migration and Asylum give some general ideas about its evolution, current state and potential future direction. Mainly path dependence shows how the core priorities in the New Pact date back to the Tampere Summit and remains stably growing. The one proof is that when the New Pact was announced, the European Commission stated that it would introduce a new framework for a fresh start so it was assumed that the New Pact would completely replace the Dublin Regulation. But soon after the announcement, the CSOs started proposing that it is actually strengthening some of the most criticised elements of the Dublin system. Although many consider that the European Union should introduce core changes in its external migration affairs, it is quite difficult to accomplish that based on the path dependence framework.

The ‘failing forward’ theoretical framework on the other hand helps to illustrate why the core priorities remain unchanged over the period of time. The very negotiations between Member States to reach a common decision is a time-consuming and difficult process. Remembering the shift from intergovernmental relations to supranational ones demonstrates that the Member States always try to advance their domestic policy agenda, mostly protective, to the European level and this is one of the few reasons why the initial migration related strategies and frameworks are being sophisticated rather than changed completely.

## **5.1 Contribution**

Instead of concentrating on a single aspect of the process, such as orchestration or securitization, this thesis adds to the discussion on the externalisation dimension of the European Union’s migration management by compiling the available knowledge and literature to create a better picture of the current situation and developments. The research aim and research question are also relevant because, despite the critical consequences for migrants’ human rights and safety, the externalisation of migration management is becoming a standard instrument for the European Union.

Relying on previous research on externalisation of migration management, the present thesis has illustrated how this strategy raises numerous concerns among CSOs and other migration stakeholders. The present thesis may contribute to the general knowledge even though the conclusions and recommendations may possibly be biased and unstable. Taking into consideration the importance of such studies in dynamic topics, the present thesis may be topical.

## **5.2 Limitations**

Given the small number of proposals this thesis analysed, its conclusions and assessment may be biased. Furthermore, the New Pact is a comprehensive strategy and the proposals included in this thesis examine different aspects of it. This creates one of several limitations by making it challenging to compare the views of different CSOs on the same question.

Reminding the fact that many CSOs expressed their critical positions through their proposals to the New Pact on Migration and Asylum, the research could be done easily. However, the current topic lacks academic literature that analyses different CSOs’ reactions to the New Pact on Migration and Asylum since it is a relatively new strategy. Therefore, the present study directly examines the chosen CSOs’ proposals in respective parts of the thesis.

The fact that migration is an ongoing and constantly changing phenomenon is another significant research restriction. The European Union's migration management strategies, policies, laws, and general approach may change due to that dynamic character in order to address the existing challenges on time. As a result, the various CSOs may make specific policy feedback and react to the externalisation component of the New Pact on Migration and Asylum. Peer-reviewed academic sources are thus not always available, particularly in the case of the recently announced New Pact on Migration and Asylum.

### **5.3 Further Research**

Future research would benefit from an explicit focus on migrant voices, particularly how the aspirations and lived experiences of migrants, returnees, and youths in source countries either contend with or match underlying assumptions, narratives, and policymaker agendas on migration and return projects carried out in third countries. The academic literature on this subject in the context of West African countries is still underdeveloped. Examining the level of policy implementation and the ways that the domestic setting may mediate policy effectiveness would also be a significant area for future research. The literature on evaluating the European Union external migration policy is still in its early stage in this field as well.

Moreover, future studies can be carried out on the effects of the New Pact on reforming the asylum policy, particularly in light of ongoing violence and war in Ukraine and increasing number of refugees as a result.

Also, further research can be conducted to explore if the New Pact involuntarily led the European Union to exercise elements of dominance. This topic is relevant among some civil society organisations. The present thesis also discusses the dominance phenomenon in the New Pact on Migration and Asylum on a shallow level.

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