

Old squabbles over EU's migration policy

What does the blockade of the EU migration reform by the Visegrád countries mean for the EU and how can it be overcome?

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ABSTRACT

In September 2020, the European Commission proposed a long overdue reform of the EU migration and asylum system. The core points of the "Pact on Migration and Asylum" concern better integrated border management with compulsory pre-entry screening of refugees, deeper cooperation with the countries of origin and a new "constant solidarity" mechanism. However, old conflicts resurfaced in the framework of the negotiations of the EU member states so far: the Visegrád states reject the legislative proposal. The countries refer, among other things, to necessary "hotspots" for refugees outside the EU and corresponding agreements with third countries. Already in the context of the 2015 migration crisis, these countries (with the exception of Poland) voted against the mandatory relocation of refugees across member states. In the following years, the relocation mechanism did not work. But here lies one of the greatest chances of agreement for the new reform. After all, the "Pact on Migration and Asylum" provides for more flexible options for joint solidarity. The reform-minded EU states around Germany and France must successfully communicate this to the Visegrád Group.

POLICY RECOMMENDATIONS

1 The reform-minded EU member states must take into account the great influence of the Visegrád countries in migration policy. The Visegrád Group is concerned with

¹ Jaroslav Daniška, "Visegrad: from intellectual idea to political reality", *International Issues & Slovak Foreign Policy Affairs*, Vol. 27, No. 1-2 (2018), pp. 43-44, <https://www.jstor.org/stable/10.2307/26592068>.

² Jakub Groszkowski, "The V4 and the EU", *International Issues & Slovak Foreign Policy Affairs*, Vol. 27, No. 1-2 (2018), p. 4, <https://www.jstor.org/stable/10.2307/26592065>.

making visible national and subregional interests in the legislative process.

2 It is important to consider conflict as a normal part of the negotiation process. Within this framework, compromises will be needed, as well as a clear line of reform-minded countries insisting on humanitarian migration and asylum policies.

3 The new solidarity mechanism must not be watered down in the legislative process and, above all, must not include a mandatory refugee distribution mechanism. Instead, this must remain one of several options for member states to fulfill their responsibilities. This is the only chance to get the Visegrád countries to agree.

In 1991, the presidents of Poland, Hungary and the then Czechoslovakia signed the "Visegrád Declaration" to officially establish the Visegrád Group.¹ The reasons for cooperation were, on the one hand, to advance integration in Central Europe, which has its own regional and historical basis. On the other hand, the former communist countries wanted to play an active role within the framework of Western European integration.² Thus, accession to the EU and NATO were the ultimate goals.³ In 1999, the Czech Republic, Hungary and Poland became members of NATO, Slovakia followed in 2004. The four states finally joined the EU in 2004.

³ Nikolett Garai, "Challenges faced by the Visegrad Group in the 'European dimension' of cooperation", *International Issues & Slovak Foreign Policy Affairs*, Vol. 27, No. 1-2 (2018), p. 25, <https://www.jstor.org/stable/10.2307/26592067>.

MIGRATION CRISIS 2015

Thirty years later, in 2021, one issue in particular remains a flashpoint between the EU and the Visegrád countries: the EU's migration and asylum policy. The negative highlight was the rejection of the EU's compulsory relocation scheme of refugees by the Visegrád countries on 22 September 2015 during the refugee crisis.⁴ The driving forces behind a mandatory quota system were France and Germany. The plan was to relocate 120,000 persons clearly in need of international protection from Italy and Greece to other member states over the next two years.⁵

One of the arguments for the rejection of the Visegrád states was that the Council of the European Union had decided the quotas by qualified majority. The European Council had originally intended that member states should agree by consensus.⁶ Subsequently, Slovakia and Hungary challenged the quota decision before the European Court of Justice, but the case was ultimately dismissed in September 2017.⁷ The European Commission, in turn, sued the Czech Republic, Hungary and Poland before the Court of Justice of the European Union in December 2017 for non-compliance with their legal obligation of resettlement.⁸ In April 2020, the Court of Justice of the EU ruled that the three countries had breached their obligations under EU law.⁹

⁴ Only Poland did not vote against the decision of Council of the European Union. Romania, together with Hungary, the Czech Republic and Slovakia, also voted against this decision.

⁵ Detelin Ivanov, "Legislation on emergency relocation of asylum-seekers in the EU", *European Parliament*, October, 2019, p. 4, https://www.europarl.europa.eu/Reg-DATA/etudes/BRIE/2015/569018/EPRS_BRI%282015%29569018_EN.pdf.

⁶ Groszkowski, "The V4 and the EU", p. 13. Note: The Council decision of September 22, 2015 was preceded by that on September 14, according to which 40,000 people in need from Greece and Italy were to be relocated to other member states on a voluntary basis.

⁷ Rick Fawn, "External assessments of Visegrad since its international recognition over the 'migrant' crisis", *International Issues & Slovak Foreign Policy Affairs*, Vol. 27, No. 1-2 (2018), p. 71, <https://www.jstor.org/stable/10.2307/26592070>.

⁸ Ska Keller, "Legislative train schedule – towards a new policy on migration", *European Parliament*, 22.11.2019, <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-2nd-emergency-relocation-scheme>.

"CRISIS OF SOLIDARITY" IN THE EU

In recent years, the EU's approach to its migration and asylum system has been widely criticized. Among other things, the distribution key has never worked across member states. As mentioned above, the European Home Affairs Ministers determined in September 2015 that 120,000 people with a clear need of international protection should be resettled in the next two years.¹⁰ As of March 2018, 33,846 asylum seekers had been resettled across the EU.¹¹ The Visegrád countries took in virtually no asylum seekers. As of July 2018, the Czech Republic resettled 12 refugees instead of the required 2,691, and Hungary and Poland did not accept any in need at all. They two countries should have resettled 1,294 and 7,082, respectively. Slovakia had an obligation to resettle 902 asylum seekers and did so with 16 persons.¹²

Today, there are still disagreements among EU member states about who should ultimately take in first-time arrivals across the Mediterranean and other protection seekers. This is why there has been talk of a "crisis of solidarity" in the EU's migration policy area.¹³

In September 2020, the EU Commission nevertheless presented a long-awaited reform for migration and asylum policy.¹⁴ The first pillar of the reform relies on accelerated asylum procedures at the border and a more

⁹ "Judgment in Joined Cases C-715/17, C-718/17 and C-719/17", *Court of Justice of the European Union*, 02.04.2020, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-04/cp200040en.pdf>.

¹⁰ "Refugee Crisis – Q&A on Emergency Relocation", *European Commission*, 22.09.2015, https://ec.europa.eu/commission/presscorner/detail/it/MEMO_15_5698.

¹¹ Keller, "Legislative train schedule".

¹² Aneta Zachová, Edit Zgut, Karolina Zbytniewska, Michał Strzałkowski and Zuzana Gabrizova, "Visegrad nations united against mandatory relocation quotas", *Euractiv*, 23.07.2018, <https://www.euractiv.com/section/justice-home-affairs/news/visegrad-nations-united-against-mandatory-relocation-quotas/>.

¹³ Shoshana Fine, "All at sea: Europe's crisis of solidarity on migration", *European Council on Foreign Relations*, 01.10.2019, p. 2, <http://www.jstor.com/stable/resrep21498>.

¹⁴ "Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum", *European Commission*, 23.09.2020, COM(2020) 609 final, pp. 5-6, https://ec.europa.eu/info/sites/info/files/1_en_act_part1_v7_1.pdf.

and faster return policy of rejected asylum seekers.

The Commission intends to introduce a new compulsory pre-entry screening for people crossing the EU's external borders without permission. In this context, a health and security check, fingerprinting and registration in the Eurodac database¹⁵ should enable faster decisions on asylum or return. This integrated border management, together with the deepening of cooperation with key countries of origin and transit, shows that the EU wants to strengthen the external dimension of its migration policy. The second pillar of the reform is based on a new "constant solidarity" mechanism. In principle, each member state must help share responsibilities in situations of pressure or risk of pressure. However, these contributions can be flexible, depending on the different situations of member states as well as changing migration pressures. First, it provides for help from other EU member states for main arrival countries such as Greece and Italy by relocating recently arrived refugees. Countries that refuse to accept refugees can alternatively show solidarity, among other things, by supporting returns from another member states. If these efforts are unsuccessful, member states commit to transfer the persons concerned and continue the return procedure ("return sponsorship" scheme, *see below*).¹⁶

However, again the old antagonisms emerged, as the Visegrád countries rejected the new Commission proposal only one day after its presentation.¹⁷ Austria likewise does

not want to accept migrants from countries of first arrival. Germany and France, on the other hand, have reacted positively to the Commission's proposals. Germany in particular wanted to mediate with the other group of states during its presidency of the Council of the EU until the end of 2020. This is because the Mediterranean states of Greece, Italy, Spain, Cyprus and Malta have traditionally been affected by the highest number of first arrivals of refugees in recent years. In addition, these countries have registered the most irregular migrants.¹⁸

Migration continues to be a very complex issue. Although the number of first-time applicants was over 1.2 million in 2015, there were still over 600,000 people applying for asylum in the EU for the first time in 2019.¹⁹ So, what does the rejection of a new migration and asylum pact by the Visegrád states mean for its chances of success? How can these contradictions be overcome within the EU?

NO DECISION IN THE NEAR FUTURE

A decision by the member states in the Council of the EU is not to be expected any time soon.²⁰ In total, the Migration and Asylum Pact consists of five new legal acts: A new Asylum and Migration Management Regulation, a new Screening Regulation, a new Crisis and Force Majeure Regulation, an amended proposal revising the Asylum Procedures Regulation, and an amended proposal revising the Eurodac Regulation.²¹ At the end of January, the Economic and Social Committee delivered its opinion on the new EU package.²² On March 12, in the framework

¹⁵ Eurodac creates an EU asylum fingerprint database for the comparison of fingerprints of asylum applicants across the EU member states.

¹⁶ "New Pact on Migration and Asylum: Questions and Answers", *European Commission*, 23.09.2020, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707#relocation; "A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity", *European Commission*, 23.09.2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706.

¹⁷ Eszter Zalan, "Visegrad countries immediately push back on new migration pact", *EUObserver*, 25.09.2020, <https://euobserver.com/justice/149537>.

¹⁸ Bernd Riegert, "Migrationspakt der EU erst im nächsten Jahr", *Deutsche Welle*, 08.10.2020, <https://www.dw.com/de/migrationspakt-der-eu-erst-im-nächsten-jahr/a-55208015>.

¹⁹ "Asylum Statistics", *Eurostat*, 25.02.2021, https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

²⁰ It has to be mentioned that the reform falls within the framework of the co-legislative procedure of the European Parliament and the Council of the EU.

²¹ Through the Eurodac system, the fingerprints of asylum seekers and persons apprehended in connection with an irregular border crossing can be compared by national police forces and Europol.

²² Keller, "Legislative train schedule".

of the Home Affairs Ministers meeting, the Portuguese Presidency noted, among other things, its intention to focus on policy issues of the external dimension, such as the effective management of the EU's external borders and solidarity and responsibility.²³ Previously, the Portuguese EU Council presidency has already declared that solving the migration crisis is at the top of its agenda. The country wants to mediate between the fronts.²⁴ Vice-President for Promoting our European Way of Life, Margaritis Schinas, said in an interview with Bruegel that he would like to see an agreement before the French presidential elections in April 2022.²⁵

However, reaching an agreement that satisfies all member states will be a very difficult undertaking. Nevertheless, there are three approaches that can facilitate finding a common solution. Here, we will focus on the relationship between the Visegrád states and the more reform-oriented states in particular.

APPROACHES FOR FINDING A COMMON SOLUTION

1 INFLUENCING EU DECISION-MAKING

First, the debate with the Visegrád countries will be about recognizing their goals and influence on EU legislation to a certain extent. In the area of migration policy, the Visegrád countries have undoubtedly exerted influence since 2015/2016, albeit in a rather anti-migration sense.²⁶ The Visegrád Group has recognized for itself that in this policy area it may be able to exert greater influence than in others that affect the larger integration process too. The countries also have addressed issues such as the political and

economic consequences of Brexit, the global competitiveness of the EU, and challenges in the context of digitalization.²⁷ Some authors even argue that the Visegrád states have successfully done so within their means, as the distribution key of migrants has never been properly applied. Moreover, the Visegrád countries have had to be taken more seriously in this regard since the last migration crisis. For instance, Hungary's Prime Minister Viktor Orbán found partial confirmation in the context of the Austrian coalition government under Chancellor Sebastian Kurz (at that time, FPÖ-ÖVP) and as a guest speaker at a CSU party meeting.²⁸

Related to this is the fact that one of the driving elements in Visegrád cooperation is to effectively reflect and enforce common national and subregional interests in EU decision-making.²⁹ It is therefore important to be aware of this mechanism. On the other hand, it must not lead to tolerating any interests of the Visegrád countries. Especially not if they go in a populist and xenophobic direction and instrumentalize migration policy for national politics.

2 CONFLICT AS PART OF AN ONGOING PROCESS

Second, it will be important to see the conflict as a process in which concessions are needed, but also a clear line from the "other" states willing to reform. Respecting and ensuring fundamental rights in the review of asylum applications and the arrival in Europe is essential. Likewise, the individual assessment of asylum applications must be ensured, as well as the essential guarantees to protect effective access to asylum, the

²³ "Informal video conference of home affairs ministers, 12 March 2021", *Council of the EU*, 12.03.2021, <https://www.consilium.europa.eu/en/meetings/jha/2021/03/12/>.

²⁴ "Portugal übernimmt EU-Ratspräsidentschaft von Deutschland", *Süddeutsche Zeitung*, 01.01.2021, <https://www.sueddeutsche.de/politik/eu-portugal-uebernimmt-eu-ratspraesidentschaft-von-deutschland-dpa.urn-newsml-dpa-com-20090101-210101-99-867303>.

²⁵ Margaritis Schinas, "What will the EU's new migration policy do differently?", *Bruegel*, 10.12.2020, <https://www.bruegel.org/events/what-will-eus-new-migration-policy-do-differently/>.

²⁶ Garai, "Challenges", pp. 27-28.

²⁷ *Ibid.*, p. 28.

²⁸ Daniška, "Visegrad", pp. 43-44.

²⁹ *Ibid.*, p. 25.

right to liberty, the rights of the child, and the right to an effective remedy.

Moreover, a certain political change of heart can be discerned. Even before the Commission's proposal in 2020, there were some signs of a positive development, from a purely political point of view. In December 2018, 152 countries ratified the Global Compact for Safe, Orderly and Regular Migration. It identifies 23 goals for good migration governance, which should work on the basis of state sovereignty, shared responsibility, anti-discrimination and human rights. While the Visegrád countries have not signed the agreement, it is nevertheless a sign of a more general policy shift. Moreover, French President Emmanuel Macron stated in July 2019 that 14 EU member states had signed the "solidarity mechanism" for the resettlement of migrants within the Union.³⁰

3 NEW SOLIDARITY MECHANISM AS A POSSIBILITY OF AN AGREEMENT

Third, and finally, it will be important for reform-minded member states to clearly define and stand by the benefits of the new solidarity mechanism for the Visegrád states. The flexible options for the contributions of member states are as follows: relocation of recently arrived persons; return sponsorship, whereby a member state takes over responsibility for returning a person with no right to stay; as well as the immediate operational support, longer-term support to build capacity on asylum procedures, reception of newcomers or return operations, or assistance in responding to specific migratory trends affecting member states through

cooperation with non-EU countries.³¹ Thus, there is only a chance for reform if the Visegrád states feel that there will be no obligatory redistribution of refugees. Such a mandatory mechanism is not envisaged at the moment.

The solidarity model is an issue on which there could be some movement within the Visegrád Group. Slovak Prime Minister Igor Matovič was much more moderate about the Commission's proposal than his Eastern counterparts. Already in 2016, Slovakia had proposed the model of "flexible solidarity" as part of its Council presidency.³² In December 2020, the Visegrád countries agreed on a common position regarding the new Pact on Migration and Asylum. The countries' interior ministers wrote, among other things, that the "solidarity mechanism should remain open and be governed by the principle of sovereign discretion. While support in the face of migratory pressure is necessary, it must be flexible and allow the freedom to choose measures matching the possibilities of the Member States."³³

Nevertheless, cohesion in the further course among the Visegrád Group is not one hundred percent guaranteed. According to the 2020 European Council on Foreign Relations' Coalition Explorer³⁴ many respondents from both the Czech Republic and Slovakia (and to some extent Poland) disclosed that Germany had many interests in common with the respective governments. This was particularly evident in the case of Slovakia, which is the only country in the Visegrad Group that has been willing to accept

³⁰ Ibid., p. 3.

³¹ "New Pact on Migration and Asylum", *European Commission*, 2020, https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en; see also: "Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum", *European Commission*, pp. 5-6.

³² Thomas Gutschka, "Der große Knall ist ausgeblieben", *Frankfurter Allgemeine Zeitung*, 08.10.2020,

<https://www.faz.net/aktuell/politik/ausland/eu-migrationspakt-der-grosse-knall-ist-ausgeblieben-16992715.html>.

³³ Polish Presidency of the Visegrad Group, "The New Pact on Migration and Asylum - a common position of V4 countries, Estonia and Slovenia", *Website of the Republic of Poland*, 2020, <https://www.gov.pl/web/v4presidency/the-new-pact-on-migration-and-asylum---a-common-position-of-v4-countries-estonia-and-slovenia>

³⁴ It is a survey of policy experts and government officials in the EU.

refugees on a small scale.³⁵ Thus, a (former) unity of the Visegrád Group could slowly crumble and make a common policy formulation on migration more difficult. This, in turn, could make it easier for reform-minded states to persuade individual critical states and achieve reform together.

CONCLUSION

At present, it looks very difficult that the new Pact on Migration and Asylum proposed by the Commission can actually be adopted by the Council of the European Union. This is because the Visegrád states have already announced their rejection of the reform. Nevertheless, they have signaled a certain openness to the new solidarity mechanism. This could be one of the only ways for the EU as a whole to actually push through the reform. In general, it is important to perceive and try to understand the goals and interests of the Visegrád states and to respond to them in the best possible way. After all, conflict with this group of states on the issue of migration is pre-programmed. This can only be resolved if the countries also feel that they are being heard. At the same time, the EU as a whole must stand by its fundamental principles on migration and asylum: respect for human dignity and the fundamental rights of people in need.

³⁵ Jana Puglierin and Ulrike Esther Franke, "The big engine that might: How France and Germany can build a geopolitical Europe",

European Council on Foreign Relations, 01.07.2020, p. 6, <https://www.jstor.org/stable/resrep25380>.

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