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### **Citation**

Wolff, S. C. A. (2024). The new pact on migration: embedded illiberalism?  
*Journal Of Common Market Studies*. doi:10.1111/jcms.13669

Version: Publisher's Version

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Downloaded from: <https://hdl.handle.net/1887/4082947>

**Note:** To cite this publication please use the final published version (if applicable).

# The New Pact on Migration: Embedded Illiberalism?

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## Introduction

2023 and 2024 developments in the field of migration governance have been marked by a shift towards the acceptance of systematic illiberal migration practices in the European Union (EU). This illiberal turn is not only a backlash against liberalism ‘in all its varied scripts – political, economic, cultural, geopolitical, civilizational – often in the name of democratic principles and thanks to them (by winning the popular vote)’ but also an ethno-nationalist turn against globalisation (Laruelle, 2022, p. 304). Today, these illiberal practices, symbolised by the adoption of the Pact and the latest migration and asylum developments, are ‘majoritarian, nation-centric or sovereigntist, favouring traditional hierarchies and cultural’ and encouraged by ‘state structures’ (Laruelle, 2022, p. 314) involving ‘anti-migrants legislation and practices such as detention camps, that have put states at odds with their own human rights declarations’. This shift has not happened overnight and is the result of several years of restrictions, pushbacks and criminalisation of NGOs rescuing migrants at sea that have become widespread in Europe. What has happened is that incidental illiberal practices have become more mainstreamed and accepted. This is at odds with the so-called post-Westphalian normative stand of the EU, which has traditionally declared to be the beacon of human rights and refugee rights against restrictive and sovereigntist member states. Global refugee norms adopted after the World War II and embraced by the EU as a liberal ambition to harmonise and create similar conditions for refugees and asylum seekers across EU member states have indeed been at the heart of the liberal international order (Lavenex, 2024, p. 1).

Ideological illiberalism within the field of migration is not new, however (Kauth and King, 2020). A ‘liberal paradox’ has always been present in immigration policies, notably after the 1970s, when Western nations decided to halt guest worker programmes (Hollifield, 2004). Since the 1990s, policies of non-admission, collaborative and delegated policies of non-arrival have been increasingly at the heart of immigration policies in Europe, such as with the adoption of visa policies or safe country rules under the Dublin Convention (Lavenex, 2024, p. 7). At the external level, readmission and return policies have been negotiated with third countries in addition to the delegation of policies of non-arrival (Lavenex, 2024). The New Pact on Migration adopted in 2024 is the last occurrence of a general strengthening of ‘organized hypocrisy’ around (European) states’ obligations to assist refugees by multiplying the deterrence practices and barriers such as carrier sanctions, ‘buffer zones, refugee camps’, which are at odds with their claims to be liberal democracies (Kauth and King, 2020, p. 383). This has been seen as not only a subversion of liberal commitments but also a shift towards ‘illiberal re-ordering’ (Goddard et al., 2024, in Lavenex, 2024, p. 9), emblematised by debates over safe third countries,

pushbacks and the erection of fences. This is explained by a tension between state sovereignty particularism and the normative ambitions of the global refugee regime, which are embedded in international human rights law and its universalism (Lavenex, 2024).

Immigration reforms, such as the New Pact on Migration, are not necessarily going through dynamics that are ‘not exclusively applicable to their natural context’ (Natter, 2024, p. 694), and it is important to keep in mind that it is not a black-and-white picture that is painted in this article. Evidence shows that in a polity, liberalism coexists with illiberalism (Fassi et al., 2023; Natter, 2024) and that, for instance, authoritarian regimes have had liberal immigration reforms. Thus, in 2013, Morocco regularised 25,000 irregular migrants with a 92% acceptance rate (Schuettler, 2017) in the search of improving its international image (Natter, 2024; Wolff, 2014). Second, liberal democratic institutions in Europe and in the EU are struggling with nativist and ethno-nationalist movements throughout Europe and anti-immigrant movements. Finally, this illiberal turn brings new questions regarding supranational institutions such as the European Parliament, the European Commission and the European Court of Justice that are known to hold more liberal preferences than EU member states, enabling a progressive and right-centred approach to the completion of the Common European Asylum System (CEAS) (Bonjour et al., 2018, p. 413). The 2024 European elections in particular and the upcoming new political priorities will highlight how supranational institutions will balance liberal and illiberal trends.

In 2023 and 2024, though, it seems that the balance over domestic preferences and policy outputs exemplified by the Pact is tipping towards illiberalism and in line with the global refugee regime. This is why this article reviews first the rise of far-right anti-immigrant ideas and an alignment of EU institutions and EU member states to deliver a credible reform in the eyes of European public opinion. Second, I argue that given the uncertain geopolitical context, the multiplication of transactional EU migration deals with authoritarian regimes is leading to embedded illiberalism in the EU. Finally, I elaborate on the future implementation of the pact and the role of academics in rethinking these illiberal developments in Europe.

## **I. The New Pact on Migration: Delivering a Credible Reform**

The following section reviews how the Pact negotiations are the result of the willingness of EU institutions to deliver a credible reform before the 2024 European elections but also reflect the mainstreaming of far-right ideas across Europe.

### *Depoliticising and Being Efficient Legislators in Times of Crisis*

Faced with the rise of the far right, EU institutions co-ordinated their work to deliver a credible and efficient pact in the eyes of the European public opinion. The ambition of the European Commission was to unblock the reform of the CEAS, which had not progressed since 2013. This pact was the result of increased co-ordination between Brussels and the EU member states and pragmatic methods. In doing so, the objective was to ‘depoliticise’ the dossier on migration, which had been blocked for so many years due to being always discussed on moral grounds. Instead, as reported in Smeets and

Beach (2023, p. 897), the ambition of Commissioner Johanssen was to even ‘dedramatize the dossier. Migration should be treated just like any other legislative dossier’.

With the perspective of the European elections coming up, European leaders have accelerated the negotiations as it was imperative to demonstrate their ability to ‘deliver’ and to show, as the far right started to gain ground in several European countries, that EU institutions were able to control borders. Roberta Metsola, President of the European Parliament (2022), was particularly keen to find an inter-institutional agreement on reaching a compromise and managed to agree on a Joint Roadmap between the European Parliament and Rotating Presidencies of the Council of France, the Czech Republic, Sweden, Spain and Belgium ‘on the organisation, coordination, and implementation of the timeline for the negotiations between the co-legislators on the CEAS and the New European Pact on migration and asylum’. Making migration a priority for EU member states and parliamentarians was seen as a key to the success of co-legislators. Whilst the progress made by various presidencies between the launch of the Pact and the arrival of the French at the Presidency of the Council remained limited, notably due to inertia on the main legislative dossiers of *Asylum and Migration Management Regulation (AMMR)*, *Asylum Procedure Regulation (APR)*, *Eurodac and Screening*, the French decided to opt for a ‘gradual approach’, which was proposed in order to avoid blockages and to make sure that progress was made on the screening and registration of migrants at the border. This ‘method’ was chosen to progress ‘in an operational and pragmatic spirit’ (French Presidency, 2022). This led to a different dynamic within the Council, and accordingly, ‘The French sought to overcome institutional inertia by not touching upon the big dossiers: AMMR replacing the Dublin Convention and the APR. Some say the French created a lot of political fanfare to agree to a number of small steps on “flanking” dossiers: Eurodac, Screening and the Schengen Border Code’ (Smeets and Beach, 2023, p. 900). A solidarity declaration was also agreed in 2023 and ‘can be read in many different ways, which might explain its success’ (Smeets and Beach, 2023, p. 901).<sup>1</sup> Instead of holding politicised discussions at Council meetings, one of the main recipes of the 4 years of negotiation of the Pact has been to work through ‘Coreper-level debates and through informal preparatory channels’ (Smeets and Beach, 2023, p. 902).

Later on, the Granada summit of 4 October 2023 was instrumental in striking a deal amongst EU member states and the European Parliament. Following the suspension of the negotiations by the European Parliament on the crisis regulation and the screening regulation, EU member states were forced to come to a compromise. One of the key issues was that Germany and the Netherlands thought that the crisis regulation would allow Southern EU member states to ‘pause’ migrant border checks when they were facing crisis conditions. In addition, Germany was in favour of protecting NGOs that are doing rescue at sea and had to drop it in a compromise with Italy (Sorgi and Barigazzi, 2023). We therefore see that there has been a strong involvement and steering from the heads of state and government represented in the Council of the EU, notably on ‘instrumentalisation, hybrid threats and returns [...] which was generally perceived as a nuisance by insiders, who felt that it politicized discussions and interfered with technical level work’ (Smeets and Beach, 2023, p. 890).

<sup>1</sup> Also see [https://home-affairs.ec.europa.eu/system/files/2023-05/Declaration%20on%20solidarity\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2023-05/Declaration%20on%20solidarity_en.pdf).

### *Mainstreaming of Far-Right Ideas*

Immigration and asylum have dominated national politics, hence EU member states' positions on the Pact. In Sweden, the extreme right, in coalition with conservatives, liberals and Christian-democrats, has restricted the rights to a residency permit and citizenship on temporary residence but also, more importantly, accelerated returns. Obtaining working permits has also become more difficult, with the minimum salary required having doubled on 1 October 2024. These measures have led to a diminution of asylum applications by 30% since January (Le Monde, 2024a). In the Netherlands, the coalition government led by Marc Rutte from the mainstream right wing party collapsed on the issue of asylum. The far-right party of Geert Wilders later won 25% of the seats, notably by conflating in a populist way the crisis of shortage of housing with the issue of welcoming refugees in the country. Meanwhile, in France, the law on immigration debated at the end of 2023 and adopted in January 2024 simplifies, most importantly, the procedures to expel delinquent foreigners, with fewer possibilities for appeals and the ability for a single judge to give a final ruling on asylum applications (instead of a panel of three judges) (Le Monde, 2024b), which is a prime example of how mainstream parties are integrating far-right ideas. The French Constitutional Court declared more than 40% of the bill unconstitutional, demonstrating how the rule of law is being undermined through politicisation.

Immigration themes dominated the European elections that took place on 6–9 June 2024. In France, this was a major theme for 43% of the electorate, in front of the 'purchasing power' (IPSOS, 2024). Immigration has been second amongst the main concerns of Europeans in the latest series of Eurobarometer, next to the war in Ukraine, and in the 2023 Eurobarometer (October/November 2023), 70% of Europeans favoured a common European policy on migration, 68% supported a CEAS and 75% wanted to strengthen EU external borders with more European border guards and coast guards (European Commission, 2023).

In May 2024, after the Pact was adopted, 15 EU member states, except France and Germany, called upon the European Commission to ask for a strengthening of the implementation of the Pact and, in particular, to address irregular migration in Europe. After 4 years of negotiations, the Pact involves a faster asylum procedure at the border and new solidarity mechanisms in the field of relocation. The screening regulation will allow to establish in no more than 7 days the identity of third country nationals, check if they pose a health or security risk and register them in *the revised Eurodac database*, which should allow to keep fingerprints, facial images and data of irregular migrants to the EU to be collected from 6 years old onwards. *The regulation on addressing situations of crisis and force majeure* includes more effective returns and a solidarity mechanism to respond to crises. The *Safe and Legal Ways Regulation* introduces a new framework on resettlement and humanitarian admission, albeit a voluntary one, for EU member states to host United Nations High Commissioner for Refugees (UNHCR)-recognised refugees from third countries. The following section reviews how the Pact negotiations and future implementation have and will be influenced by the geopolitical context surrounding discussions on the reform of asylum legislation in Europe.



## II. Migration Diplomacy and Embedded Illiberalism?

Discussions over the New Pact have revealed a ‘geopoliticisation’ of migration and asylum whereby instability and foreign influence increasingly impact the way the EU maps its strategies and policies about migration, anticipating the risk of instrumentalisation by third countries and the idea that migrants can be used as ‘weapons of mass migration’ (Greenhill, 2016). It has also brought a clear shift in Europe, which is to perceive asylum seekers increasingly as a risk for our societies and thus accelerate some of the illiberal practices introduced. The organised crossing of Middle Eastern refugees and migrants by Lukashenko’s regime on the border between Belarus and Poland and with the Baltic countries has led EU member states to realise that refugees can be used as a ‘weapon’ by illiberal regimes to blackmail and destabilise the EU. This has resulted in the direct adoption of the instrumentalisation package, which provides EU member states with more leeway and discretion in implementing EU law.

EU migration diplomacy is not new though and has taken place initially through the externalisation of EU migration and border policies with third countries, which has enabled the EU to organise delegated policies of non-arrival but also outsourcing policies of non-departure, creating safe zones in third countries. Since 2004, the EU has multiplied the conclusion of bilateral agreements with third countries in the form of readmission agreements, mobility partnerships, visa-free dialogues and visa liberalisations. These instruments, mostly negotiated by Directorate General (DG) Home, have been approached in a sectoral manner, sometimes competing with national instruments (Cassarino and Marin, 2022). EU member states have also resorted to bilateral treaties and agreements with third countries to co-operate on the fight against migration, such as the 2008 Treaty on Friendship, Partnership and Cooperation (TFPC) under Qaddafi or the most recent memorandum of understanding signed with the Government of National Accord in 2018 that was signed between Italy and Libya (Cusumano and Riddervold, 2023, pp. 3024–3025). These types of agreements involve the prevention of irregular migration and intensive training by Italy and the EU of the Libyan Coast Guard and Navy (Cusumano and Riddervold, 2023).

What has changed, however, in 2023 is that there has been a clear multiplication of these migratory deals, and illiberalism is now being embedded more clearly within EU diplomatic tools and strategy. More specifically, there is a coordination between EU institutions and member states through the branding of ‘Team Europe’. It is indeed not anymore a business led either by EU member states as the Italian–Albanian deal of November 2023, but it is now increasingly a public branding exercise whereby the European Commission President, together with Prime minister Rutte of the Netherlands, shake hands with Tunisian dictator Kais Saied. Following the deal with Tunisia in July 2023, Mauritania signed in January 2024 a deal with the EU under the influence of the Spanish presidency, as well as with Egypt in March 2024 and Lebanon in May 2024. Indeed, the Hamas–Israel war has led to more crossings from Lebanon to Cyprus, which had already started earlier with 4500 Syrians leaving from Lebanon to Cyprus in the whole year 2023 (AP News, 2024). The civil war going on in Syria for 13 years, the strains on Lebanon to host refugees and a severe economic crisis have led to these departures and raised increasing concerns amongst the Cypriot authorities, who have been pushing, together with Austria and Denmark, for a new deal to be agreed (Stamouli, 2024).

These deals involve real diplomatic gains for third countries. For instance, in Tunisia, the memorandum of understanding includes five pillars: macroeconomic stability; trade and investment; green energy transition; people-to-people contacts; and migration and mobility. By ‘Team Europe’, we see that there has been important co-ordination between EU member states and EU institutions, under the leadership of the European Commission, to present solutions that are visible and easily branded in the eyes of public opinion. Most of these deals involve mobilising various diplomatic tools to bring stability and support economies in Tunisia, Egypt and Lebanon with big investments. Labour migration is, however, not so central to these deals and Talent Partnerships launched by the EU, are only too modest in the light of the demographic challenge faced by the EU.

This acceleration of migration deals is taking place within a broader context of the Global Compacts on Refugees and Migration adopted in 2018 for a ‘Safe, Orderly and Regular Migration’, which have re-affirmed at the global level that migration management is the business of states and fundamentally a sovereignty-related issue (Micinski and Lefebvre, 2024). It is therefore no surprise that the Rwanda case in the UK and the willingness of the Sunak government to list Rwanda as a safe country in order to legally be allowed to send back refugees and asylum seekers to a third country are clearly one of these practices that circumvent international law and the Geneva Convention of non-refoulement principle. And although historically, Denmark is one of the first EU countries that adopted a safe country scheme in 1986 (FitzGerald, 2019), which is now the case for 12 EU member states, it is also the first EU country that has decided to adopt a law regarding the extra-territorialisation of asylum processing, like the UK, and which has been criticised by the UN Committee against Torture (United Nations Human Rights, 2023).

This trend towards the multiplication of EU–third country diplomatic deals is questionable. Regarding the EU–Tunisia deal, UN experts have raised concerns about ‘allegedly discriminatory treatment of sub-Saharan migrants’, ‘collective expulsions’, ‘deportation of migrants’ (OHCHR, 2023) and somehow subverting liberal norms and international law by agreeing on a deal with a third country to practice illiberal migration governance. Prior co-operation with Libya has also been put into question in the past. Cusumano and Riddervold rightly question why EU institutions and its member states co-operate with Libyan forces, which ‘besides contradicting the EU’s own commitments and being both ethically questionable and at risk of judicial review by the ECtHR, externalisation is also potentially ineffective due to the volatility of the political situation in Libya and the weakness of the GNA, which can hardly serve as an effective partner in bilateral migration governance’ (Cusumano and Riddervold, 2023: 3025).

Another interesting development in 2023 is that sea crossings in the Channel have continued and that the motto of ‘taking back control’ popularised by pro-Brexit campaigners did not materialise on the contrary. In 2023, there have been 29,437 crossings, which is 36% lower than the record 45,774 crossings for the whole of 2022 (BBC, 2024). In spite of two decades of Franco–British bilateral maritime and border co-operation, with juxtaposed controls and the Touquet agreements of 2003 and the Sandhurst Treaty 2018, both countries committed with the March 2023 Franco–British summit to a UK contribution of more than half a billion euros over 3 years to improve patrolling of the borders and stopping smugglers. Overall, according to a Parliamentary report, the UK committed slightly

more than £232 million between 2014 and the end of the financial year 2022/2023 – additional payments of just under £87 million, at least some of which appear to have been paid to the French government (House of Commons, 2023). With Brexit, the UK was not able to secure any co-operation with the EU, and since it has now withdrawn from the Dublin Convention, it has not been able to find ways to return asylum seekers. Refugees who end up in Calais and Dunkirk have no access to safe routes to go to the UK, and this is particularly worrisome for unaccompanied children. According to a report from Safe Passage between 2010 and 2020, Safe Passage (2023) says that ‘only 6% of unaccompanied children who got asylum in the UK arrived via a safe route – and that was before the routes for unaccompanied children. Overall, 83% fewer refugees have arrived via a safe route in the 12 months to June 2023 compared to the previous year’. Yet there is little thinking about how this bilateral co-operation in the Calais Harbour and the lack of legal channels have participated to the situation of the sea crossings and ‘small boats’.

Regarding EU deals are illustrating the concept of illiberal practices as the European Parliament is usually not involved in their negotiations, therefore sidelining democratic scrutiny and leaving (legal) review in the hands of ombudspersons and courts. Like the EU–Turkey deal of 2016, the European Parliament has not been involved, and in the case of Tunisia, it even brought the case in front of the European Ombudsman (2023), questioning the EU’s compliance with human rights obligations in agreeing to an EU–Tunisia Memorandum of Understanding and whether a proper preliminary human rights impact assessment was conducted. This had also been the case for the EU–Turkey 2016 deal, where the Ombudsman stressed that ‘the political aspect of the Agreement does not absolve the Commission of its responsibility to ensure that its actions are in compliance with the EU’s fundamental rights commitments’ (European Ombudsman, 2016). At the national level, for the first time, Amnesty International Netherlands, Boat Refugee Foundation and Defence for Children have decided to sue the Dutch states for violating Dutch, international and EU law as a party to the EU–Turkey deal. This has led thousands of people to be forced to apply for asylum on the Greek islands and had to stay in camps that were overcrowded and where ‘children’s rights violations’ were reported, but it also has important negative consequences for the mental health of migrants (Stichting Bootvluchteling, 2024).

### III. After the New Pact on Migration: Researching EU Migration and Asylum Policies in Times of Illiberal Practices

What are the lessons learned from the adoption of the New Pact on Migration for future policy developments and researching EU migration and asylum policies? First, studying liberal and illiberal practices, policies and outputs requires nuanced tools and methodologies to avoid binaries, given the complexity of trends at stake at the global, regional, national and local levels. It would also be wrong to argue that a liberal policy should be about opening borders. Some agree that elective immigration has already been seen as desirable to consolidate and save the liberal community (Walzer, 1983). Yet, times of crises and permanent emergencies (Wolff and Ladi, 2020) have enabled the strengthening of embedded illiberalism, namely, an illiberalism that is now embedded in European structures and reflects the broader re-ordering of the liberal order. Migration scholars have restlessly documented these illiberal practices, the re-bordering processes, the acceptance of



pushbacks and the erection of fences, and denounced the ‘border spectacle’ (De Genova, 2015) and the increasing funding into deterrence and criminalisation of NGO work in rescue at sea, all pointing towards the questioning of the EU’s liberal credentials. At the same time, this could be seen as attempts to protect the internal political community and ‘self-preservation’ in front of mounting crises and geopolitical threats (Fassi et al., 2023, p. 2277). However, this ontological explanation could work in relation to the liberal turn and acceptance of 4 million Ukrainian refugees, when the EU decided very pragmatically to safeguard the European community in front of the Russian threat (Della Sala, 2023). Yet by activating the Temporary Protection Directive, a two-tier system vis-à-vis Ukrainian refugees who have benefited from group protection, has now been put in place, differing from other practices vis-à-vis other parts of the world and reproducing world/racial hierarchies amongst refugees.

Second, the adoption of the New Pact on Migration also illustrates well the challenges regarding the future work of academics on migration and asylum and how to make sure that scientific evidence and data on migration help to counter processes of crisisification (Moreno-Lax, 2023) and securitisation that have characterised the adoption of the New Pact on Migration. Narratives of crisis and securitisation dominate the discourse of EU and European policy-makers, and yet only too rarely does objective migration data help to change the discourse. Within the context of the adoption of the Pact, if one compares globally, the rates of refugees welcomed by other countries worldwide to the number of refugees and asylum seekers in the EU, are relatively low. The share of refugees in 2023 was 1.5% compared to the total EU population. The highest increases have been registered on the Western African, Eastern Mediterranean and Central Mediterranean routes, with the latter giving the most concerns to EU policy-makers with more than a 50% increase in irregular border crossings compared to 2022. In comparison, refugees in Turkey, Iran or Uganda represent 4.5%, 4% and 3.5%, respectively, of their population (Dumbrava, 2024). Another example is how politicians in Europe have argued that a mission like *Mare Nostrum* or the presence of NGOs to do rescue at sea act as a ‘pull factor’ for migrants and refugees to cross the Mediterranean, whilst in fact, scientists agree that there has been no correlation between the presence of NGOs to do rescue at sea and the number of migrants leaving North Africa, as demonstrated from migrants leaving the Libyan shores between October 2014 and October 2019 (Cusumano and Villa, 2019).

Overall research should also demonstrate how this embedded illiberalism distances the EU and European governments from producing effective immigration policies. Some have suggested that the only way for governments to govern migration is ‘if they change the economic realities that influence labour demand and hence immigration’ (De Haas, 2023, p. 368) and to be in line with the general economic policy and the labour market policy, which in the case of the EU is a real challenge with 27 different labour markets. It also means reconsidering how dependent the EU wants to be on other countries when it comes to strategic sectors of the economy where we have labour gaps. Embedded illiberalism has been built on securitisation, crisisification and the general undermining of the global refugee system, but it is probably built on the false assumption of a ‘crisis’ that is quantitatively manageable by the EU. The real challenge is to know in which society we want to live and how to mainstream migration throughout our policies instead of focusing on it as a single problem. A social Europe with more safety nets for those who will be excluded from globalisation and Europeanisation would also be

welcomed to counter anti-immigration discourses. These elements have, for now, not been central to the adoption of the New Pact.

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