

SANTOS VARA, Juan, *El Nuevo Pacto de la Unión Europea sobre Migración y Asilo* (Tirant lo Blanch, Valencia, 2024)

Migration and asylum are constantly at the top of the EU political agenda, since the human and institutional consequences of deficiencies in the supranational management of these phenomena tend to turn limited legislative harmonization and poor implementation into crises. And precisely the so-called ‘refugee crisis’ the EU was confronted with in 2015-2016 was mostly the result of an uncomplete and inefficient Common European Asylum System (CEAS), whose reform represents the core objective of the New Pact on Migration and Asylum the Commission proposed in September 2020. This Pact contained political orientations to gear these policies in the coming years and was accompanied by a set of legislative proposals concretizing an apparent ‘fresh start’ on migration, asylum and border management. After almost four years of disagreements between EU institutions and among Member States themselves, defending quite distant positions as regards mainly the tension between solidarity and responsibility on the reception of asylum seekers and the examination of their protection claims, the Council and the European Parliament finally agreed, in May 2024, to approve a normative package – as legislative expression and thus ‘blessing’ of the Pact – consisting of modifications to already existing norms of the CEAS and the adoption of new ones. On the substance, the former relate, among other aspects, to asylum procedures, qualification for international protection, reception conditions, and the Eurodac fingerprint database, while the new acts cover asylum and migration management, screening and border return procedures, reaction to situations of crisis and force majeure, or resettlement and humanitarian admission. The whole reform, as the Commission puts it, will allow the Union and its Member States to rely on faster and more efficient procedures for asylum and return, with stronger individual safeguards – not always easy to reconcile with urgency –, to act against the abuse of the system by further securing the external borders and preventing secondary movements of asylum seekers; to make solidarity and fair sharing of responsibilities on border management and asylum work; as well as to adequately respond to unanticipated pressures and crises caused by particular migratory pressure.

Within this context, the book by Prof. Santos Vara, devoted to analyze the main novelties foreseen in the New Pact and specified in the legislative proposals associated to it, is certainly welcome, since this work aims at assessing whether the new legislation will be apt to tackle the challenges faced by the EU on migration and asylum and provide well-functioning policies in these areas, both in ordinary times as in times of crisis. A second objective of this monograph seeks, more particularly, to assess if the legislative proposals allow the Union to fulfill the obligation enshrined in art. 78 TFEU, the legal basis binding it to develop a common asylum policy that offers an adequate statute to third-country nationals in need of international protection and respects the *non-refoulement* principle. By undertaking this research, Santos Vara achieves to provide the keys to the political and legal challenges underpinning the reform, and highlights the limitations that, primarily in terms of human rights protection, derive from some of the most relevant and controversial elements of the proposed reform, which are now part

and parcel of EU asylum and migration law. Although the book, because of its publication date, focuses on the letter of the proposals associated to the Pact and not on the final versions of the legislative acts that have been recently adopted, mostly in the form of regulations, by the EU co-legislators, the analysis by Santos Vara of those proposals whose most important features are definitely preserved to a large extent in the final acts appears tremendously valuable in order to correctly understand the political challenges this reform raises, the logic behind the diverse negotiating positions (and their evolution) defended by the different institutional actors, as well as the implications of this legislative reform from the perspective of both human rights protection and the efficiency and normative coherence of the system itself. The monograph does not, understandably, comprehend the proposals related to the whole legislative package which occupies now hundreds of pages of the Official Journal, but concentrates on those that certainly cover some of the most salient aspects of the reform, such as the pre-entry screening procedure, the main amendments to the CEAS – particularly, the asylum border procedure, the modification to the Dublin rules, and the solidarity mechanism –, as well as the external dimension of EU asylum and migration policies.

More in detail, the book is divided into four chapters. The first one brings to light the lack of coherence in the design and implementation of the CEAS before the reform, by explaining the functioning of the Dublin rules on the determination of the Member State responsible for examining an asylum application, and then showing the deficiencies of the current CEAS as regards the imbalances caused by the Dublin system, the need for an integrated approach on implementation, as well as the lack of efficient mechanisms to put solidarity at work and to face situations of crisis. This political and normative context allows the author to present the response provided by the Union to the refugee crisis of 2015 and to place the New Pact on Migration and Asylum within that precise context, by assessing the recourse to this political instrument, the return of the intergovernmental dynamic or the complexity of the negotiations on the legislative proposals conforming the Pact and the political considerations behind them, whose command by the author, shown here and throughout the book, provides a clear added value to understand the spirit of the new rules.

The second chapter examines the pre-entry screening procedure to which third-country nationals will be subject to at the external borders (introduced by Regulation 2024/1356), aimed at contributing, according to the Commission, to the setting of a seamless migration process. Attention is especially paid by the author to the legal fiction of non-entry this (not so) novel procedure creates; the role EU agencies such as Frontex and the EUAA will play at the screening – reintroducing, because of its similarities, the controversial practices typical of the hotspots approach –; the impact this stage of control may have on the fundamental rights of persons affected; and the ambiguous relationship between the pre-entry screening and the principle of solidarity in practice. It is worth noting how the author constantly confronts, throughout the book, the projected reforms with the positions expressed by the ECJ and the ECtHR through their case-law on the current legislation. It will be crucial to see how the Luxembourg Court in particular interprets the new provisions in light of EU law safeguards, taking into account that some changes in secondary law prescriptions might lead to relevant jurisprudential shifts.

In the third chapter, Santos Vara focuses on the analysis of the proposals which specifically make up the reform of the CEAS, by paying attention and puzzling out the meaning and implications of some of its most salient elements. To that effect, this chapter first examines the systematic recourse to the asylum border procedure (as foreseen in Regulation 2024/1348, the *Asylum Procedures Regulation*) and the integration of both the asylum and return decisions in these cases. It then proceeds to the analysis of two transcendental pieces of the new Regulation on Asylum and Migration Management (Regulation 2024/1351): on the one hand, the modification to the Dublin rules on the distribution of responsibility for examining asylum applications, which preserves, to a great extent, the current legal regime with some contentious exceptions, such as the obligations imposed on asylum seekers and the new rules affecting unaccompanied minors; as well as, on the other hand, the mandatory mechanism of flexible solidarity aimed at balancing the system through Member States' contributions in the form of relocations of asylum seekers and refugees and other alternative measures, a mechanism that Santos Vara interestingly assesses in terms of differentiated integration, a very well-known process in the EU migration and asylum policies.

The fourth and final chapter addresses another essential component of the EU migration and asylum policies, its external dimension, which undoubtedly occupies a prominent place within the text of the New Pact and when it comes to its implementation too. As Santos Vara rightly points out, strengthening cooperation with third countries on migration and asylum receives more attention particularly when the Union is confronted with disagreements and lack of progress on the negotiations relating to the internal dimension of these policies, as if, paradoxically, it would be easier to achieve consensus with third countries than among Member States themselves. The analysis offered in this chapter delves into three features of the external dimension of EU migration and asylum policies that continue to raise legal objections. Indeed, the informalization of cooperation instruments, the externalization of migration management functions to third countries, and the increasing recourse to negative conditionality with regard to return and readmission commitments are still very present under the New Pact, confirming the latter's non-innovative approach to the detriment of rule of law considerations.

The book concludes with thoughtful and acute remarks on the assessment of the New Pact, the approach underpinning it, and the intricate issues raised by its core elements, questioning that the Pact and the normative acts it brings about, focused on limiting access to the territory and ensuring returns, are able to address the structural weaknesses of the EU migration and asylum system. In sum, this monograph provides a solid and accurate analysis of the spirit and main contours of a legislative reform whose interpretation and actual application, which has been delayed, for most of the regulations, until 2026 in order to properly prepare for its implementation, will continue to occupy the center of the political and legal debate on migration and asylum at both the supranational and national levels in the years to come. The book by Santos Vara therefore offers a very valuable reading for seizing the sense of the new rules and grasping the implications these may have on the efficiency of the EU migration and asylum policies and the rights of persons they are meant to protect.

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