The European Council considers that the time has come...to impart a new impetus to the definition of a common immigration and asylum policy that will take account of both the collective interest of the European Union and the specific needs of each Member State,” declares the preamble to the planned EU Immigration Pact.

If the French government is to be believed, immigration policy in Europe is in need of some ‘house-keeping’. This is the rationale behind the pact proposed in January and due to be signed at the October EU Summit by all 27 Member States.

But is this the new political impetus that paralysed European immigration policies need, or simply a branding device for a domestic audience? Does it offer anything new for the concept of common immigration policies, currently mired in a bog of diverse national approaches? And where does it leave the forthcoming Czech and Swedish EU Presidencies, tasked with developing the next multi-annual Justice and Home Affairs programme as a successor to the 2004-2009 Hague Programme?

The Pact is intended to provide a roadmap for future European immigration policies and sets out five priorities for action: legal immigration and integration; control of illegal immigration; effective border controls; a European asylum system; and migration and development.

None are new areas of EU action: both the Tampere and Hague Programmes were conceived and articulated with the aim of addressing all aspects of migration to Europe. The Pact’s preamble gives the impression that immigration policy-making at European level has stalled. But while ambitions to create a single EU immigration policy have been scaled down in recent years, the dynamics of policy development in each area differ greatly.

Drivers and dynamics

Immediate and visible events have tended to act as a catalyst for EU action, with terrorist attacks and renewed concerns about Europe’s ‘leaky’ Eastern and Southern borders transforming external border control policies from mere ‘compensatory measures’ into an independently-driven mission.

The EU’s border management agency FRONTEX was conceived as a purely administrative body, but growing numbers of migrants arriving without papers in Spain, Italy and Malta have boosted its role in coordinating much of the frontline work.

While differing over details, all Member States have a common interest in a strong external border. But this consistency has been lacking in almost all other areas, including building cooperation on migrant integration. While political rhetoric about demographic change and the role of migration in Europe’s future competitiveness has increased exponentially, only the bare minimum has been achieved in concrete terms.

The current ‘Blue Card’ proposal is an example of this – and of the...
have been given new impetus, going
depth of finding unanimous agreement amongst 27 Member
States. The objectives set out in Tampere and Hague have not
equally, integration concerns –
heightened by violence and social
rifts – have prompted significant
policy changes at national level,
not least greater focus on language
testing and limits on cultural and
religious practice. This has not
translated into EU legislation, and
work in this area remains restricted
to articulating general principles
and exchanging information.

The external dimension of
migration – now re-branded
as the ‘Global Approach’ – has
been given new impetus, going
far beyond the parameters
of the multi-annual programmes. In
June, the EU agreed ‘mobility partnerships’ between several
Member States and Cape Verde and
Moldova, partly in reaction
to the difficulties encountered
in harmonising diverse immigration
needs and policies. Member States
do not need common policies to
cooperate with third countries,
merely common objectives.

The panic caused by high numbers
of asylum applications in the 1990s,
which drove much of the initial
work on a Common European
Asylum System, has given way to a
focus on illegal residence and
working. This is driving a number of
EU initiatives, such as the current
proposal on sanctioning employers
of third-country nationals working
illegally and the recent agreement
on the Returns Directive.

This year, the economic downturn,
combined with a continued public
perception that immigration
numbers are too high, has prompted
governments to shift their policies
further in the direction of control.

Italy’s new centre-right coalition
has, for example, made a number
of high-profile legislative changes
(from army personnel on the streets
to prison sentences for illegal
entry and residence) effectively
‘criminalising’ irregular migration.
Even immigrant-friendly countries
such as Spain have moved to
facilitate the return of migrants
who lose their jobs.

Other apparent points of growing
convergence (again reflected in the
Pact) are an increased focus on
attracting high-skilled workers, and
continued ambivalence towards
medium- and low-skilled migrants.

**State of play**

The Pact comes at a time when
EU institutions are working on a
wide variety of migration-related
initiatives. Next year, proposals
on seasonal workers and
intra-corporate transferees will be
unveiled, and an integration forum
and portal launched. So on paper
at least, the EU is very busy.

Furthermore, as Member States
keep emphasising, the Pact is not a
legally-binding document, but
rather a political statement
intended to pave the way for the
next five-year programme. It is,
however, unclear how it fits with
other European pronouncements
on migration. So why has it been
drafted at all, and why now?

That said, the Pact has undoubtedly
spurred other actors to think more
depth about future priorities.
Fearing it would be sidelined
completely, the European
Commission set out its own
principles for future immigration
policies in June, centred on the
concepts of solidarity, prosperity
and security. Meanwhile, other
Member States have reacted to the
initial French draft, agreeing and
disagreeing in equal measure. Its
most useful purpose may therefore
be as a catalyst for debate.

**Work in progress**

Regardless of its ultimate role,
the Pact clearly heralds a more
conservative approach to
immigration, in line with changing
public and political attitudes.
It looks at immigration policies
through the prism of ‘control first’,
making this more explicit than in
the past. Of the five areas identified
for action, just one concerns
promoting access to the EU, and
even this refers to preventing illegal
and undesirable migration.

That the Pact reflects a French
rather than a European perspective
on immigration is hardly
surprising. The first draft made
no mention of the various EU
concepts which have emerged in
recent years, notably the Global
Approach to Migration, or of
recent Commission proposals.

This, coupled with the use of
phrases more frequently uttered
in the domestic debate – such as
‘immigration choisie’ (selected)
and ‘co-développement’ (linking
migration and development) –
highlight the Pact’s origin as a
statement primarily aimed
at a French audience. This
language, however, was watered
down after consultation with
other Member States.

When the first draft was circulated,
the media immediately picked up
two elements: the proposed ban
on mass regularisations, such as
the amnesty for illegal migrants
introduced by Spain, Italy and
France itself in recent years; and
a commitment to make new
immigrants sign an ‘integration
contract’ detailing their responsi-
bilities to their ‘host’ country.

The proposal to ban mass
regularisations at EU level was
politically unrealistic: Member States are reluctant to commit themselves to common policies which inhibit their freedom to legislate on immigration and remove policy tools from their armoury, even if most are publicly opposed to regularisations. The proposal was quashed by Spain, but statements such as ‘illegal migrants on Member States’ territory must leave that territory’ remain, implying a common ‘zero tolerance’ approach.

And how would such a ban work in practice? How many illegal migrants would have to be legalised at once, and across what geographical area, to qualify as ‘mass’? And who would decide? In some countries, the regions have autonomy to decide on such amnesties, and there are growing calls from Europe’s cities for mayors to be given similar powers.

The idea that each Member State should introduce ‘integration contracts’ was equally unrealistic. Each country’s approach varies widely and several are deeply opposed to ‘contracts’ in principle. Many question whether integration goals can be achieved through contracts. How meaningful are they to those who sign them? They also send a negative message to migrants, implying that they lack basic values.

While this idea has been removed from the Pact, much of the text focuses on defining a balance between migrants’ rights and responsibilities. This draws on the EU’s 2004 Common Basic Principles on Integration, but omits to mention the first, fundamental principle: that integration is a two-way process. The emphasis is on migrants’ ability to fit in with European societies, rather than recognising that migration also changes those societies’ dynamics.

The lack of realism also showed in the initial proposal to create a number of new border control institutions, without evaluating existing policies and institutions.

The Pact also initially proposed a mutual information system for all changes of national policy. Member States are currently only required to inform each other of policy changes that might affect other EU countries. The system relies on a loose interpretation of this rule, and does not function effectively. But the idea that immigration policies – a closely guarded national competence – should become the business of all other Member States is unpalatable for many: both Denmark and Italy have had their national policies questioned by the EU in recent months, and both reacted furiously.

Finally, the Pact suggests that Member States consider their own “reception capacity” for migrants’ families, and the capacity of family members to integrate into European society. The idea that Member States have a “capacity” to receive migrants is new. In fact, limiting family reunification may impede the integration of migrants already in-country, making them feel unwelcome and forcing them to return home regularly or permanently. It is also questionable whether this conforms with existing EU family reunification law – not to mention human rights’ obligations.

What’s not in it

While different categories of migrants are highlighted – legal vs. illegal, high- vs. low-skilled, asylum seekers vs. economic migrants, temporary vs. permanent – non-nationals are treated as an amorphous mass to be dealt with as such, rather than as individuals, members of society and potential citizens. Indeed, citizenship is not mentioned at all. Given the vast diversity in migrants’ origins, destinations, life choices and cultures, treating them as a single homogeneous group is unrealistic, not to say naïve.

While past political declarations have highlighted the need to harmonise immigration policies, the Pact downplays this. It commits Member States to ‘organise’ legal immigration rather than construct common policies. This reflects the difficulties to date in shaping common policies for legal entry and residence, as well as many Member States’ reluctance to relinquish their competence.

Finally, as the EU considers how to deal with yet another blow to the institutional reform process, the Pact makes no reference to how immigration policies might be pursued. In 2006, the Finnish Presidency made a concerted effort to invoke the ‘passerelle’ clause, a mechanism for moving to qualified majority voting and co-decision on immigration policies. The Pact contains a number of policy ideas that would only be feasible with changes in voting practice, but makes no mention of either the Lisbon Treaty or existing passerelle clause.

Prospects

Not only does the Pact contain very few specific initiatives, and nothing on a grand scale; it also contains more ‘don’ts’ than ‘do’s. It is certainly more direct than most political statements emanating from the European Council: it uses well-worn phrases such as ‘solidarity’ and ‘shared responsibility’, but notes bluntly that the key driver for cooperation is that “one Member State’s actions may affect the interests of the others”. This conceptualisation of solidarity as self-interest narrows its
remit for policy-making, but is probably more honest about EU governments’ political motivations.

This bluntness caused problems for other Member States. Many were uncomfortable with the phrase ‘immigration choisie’, and it was finally replaced with ‘managed’. However, the focus of economic migration policies in most EU countries has clearly shifted towards ‘selecting’ the brightest and best. It is the explicit nature of the statement, rather than its policy portent, which sparked objections.

The Pact’s impact

So is the Pact merely a descriptive political exercise? It certainly responds to changing dynamics. The Hague Programme committed Member States to creating a common asylum system by 2010. Now the European Council is more modest about what can be achieved. (For example, the joint processing of asylum applications envisaged by Hague is no longer discussed; merely the possibility of a proposal for a single procedure by 2012.)

In terms of economic migration, the focus is not on harmonisation but on common objectives, acknowledging that Member States not only wish to retain control over policy but also have vastly different needs and perspectives. The Blue Card proposal’s evolution confirms this, with Member States overwhelmingly favouring a complementary system which does not replace their own policies for attracting (selecting?) the brightest and best.

Foreign policy is given more prominence in the Pact than in the Hague Programme. But the proposals in this area reflect the limitations on the Commission’s ability to act, and perhaps uncertainty amongst Member States about where such discussions lead in policy terms. The focus here is on information-gathering and mainstreaming rather than on committing resources and changing rules.

Generally, the Pact moves the EU away from specific and ambitious harmonisation projects and towards committing Member States to political objectives. This raises real questions about how much impact it will have on European policies.

One of its stated goals is to shape the next five-year programme variously described as Hague II, post-Hague and Stockholm. For the Swedish Presidency, tasked with finding agreement on this, it poses both a challenge and opportunity. The Pact is a hybrid document, intended to drive the next multi-annual programme in a particular direction without dictating terms. Its vagueness may thus be exploited by those who want to readjust its overall direction.

However, the Pact’s indirect impact should not be underestimated. As a political statement of European intentions, it will reverberate in ‘sending’ countries across the globe (suffice it to recall here the outrage expressed by Latin American governments when the Returns Directive was agreed). Brazil has already expressed concerns about the text.

The Pact has already prompted accusations that Europe is even more two-faced about immigration cooperation than previously thought. The fact that non-EU countries follow the Union’s declarations so closely should be taken seriously, especially given the high priority the Pact puts on cooperation with third countries.

Also, in responding to current political sentiment in Europe, the key message sent to EU residents – nationals and migrants alike – is that migration is tolerated in some forms, but not really welcomed.

Countries which spend a great deal of time discussing how to fill labour shortages and promote harmonious societies should pay more attention to the ripple-effect this may generate in those societies and among potential migrants (those seen as welcoming tend to be more successful at attracting the migrants they want). While the Pact begins by noting that “international migration is a reality that will persist”, the rest of the text infers that this will be despite the best efforts of European policy.

But it could have one potentially positive impact: separating immigration issues from the rest of the Justice and Home Affairs portfolio, paving the way for decoupling immigration and asylum. Administratively, this may provide a more manageable way to carve up the workload in a policy area now producing up to a third of new EU legislation. Substantively, immigration and integration issues would be separated from counter-terrorism, security and judicial cooperation – issues which are too often mixed up.

The Commission laments that intergovernmentalism too often triumphs over the central goal of meaningful harmonisation. The Pact is a clear example of this, but it also shows how intergovernmentalism can reduce the more extreme excesses of any one country’s vision of European immigration.

Elizabeth Collett is a Policy Analyst at the European Policy Centre. The issues addressed in this paper are analysed in the EPC’s Migration and Integration Forum.