

The Distribution of Responsibility in Relation to the European Migration Crisis

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Abstract

Migration and asylum governance are embedded within a broader framework of international law, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, international human rights treaties, and customary principles governing the protection of persons fleeing persecution and serious harm. Although international refugee law does not impose a formal mechanism for the allocation of responsibilities among states, the principle of international cooperation and burden-sharing has long been recognized as an essential component of refugee protection. The New Pact on Migration and Asylum of 2024 represents the European Union's attempt to reform its migration and asylum governance after the institutional and political challenges revealed by the European migrant crisis. This paper examines the New Pact as a policy instrument aimed at strengthening solidarity and responsibility-sharing among EU member states in times of migration pressure. It analyzes the main mechanisms introduced by the Pact, including the permanent, mandatory, flexible and needs-based solidarity, relocation of asylum seekers, return sponsorship, and crisis-management procedures. Through a qualitative policy analysis, the study evaluates whether these mechanisms effectively address structural imbalances in the EU asylum system and whether they can enhance cooperation between frontline and non-frontline member states. The findings suggest that the Pact represents a significant step toward institutionalizing solidarity by introducing multiple forms of contribution that allow member states to participate according to their capacities and political preferences. As a result, while the New Pact offers an innovative framework for collective migration governance, its effectiveness as a tool of solidarity largely depends on the political will and sustained cooperation of EU member states. Overall, the study contributes to the broader debate on the future of EU migration governance and the challenges of balancing national sovereignty with collective responsibility in managing migration flows.

Keywords: migration governance; EU solidarity; New Pact on Migration and Asylum; asylum policy; burden-sharing; European Union; migration crisis.

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1. Introduction

Migration has long been one of the most contentious issues within the European Union, particularly since the 2015 refugee crisis, when an unprecedented number of migrants and asylum seekers arrived at the Union's external borders. The crisis exposed significant shortcomings in the Common European Asylum System (CEAS), revealing the inability of existing mechanisms to ensure an equitable distribution of responsibilities among Member States. Previous experience, starting from 2015 when there was an unprecedented influx of migrants to the EU, has shown the inefficiency and ineffectiveness of the introduced mechanisms, especially in the area of relocation of migrants who found their way to the territory of the European Union³. In particular, the Dublin Regulation, which allocates responsibility for examining asylum applications primarily to the state of first entry, imposed disproportionate burdens on frontline countries such as Italy and Greece. The resulting political tensions and divergent national responses highlighted the absence of an effective system of burden-sharing and raised broader questions concerning solidarity, responsibility, and compliance with international legal obligations.

The challenges encountered by the European Union cannot be understood solely through the perspective of EU law. Migration and asylum governance are embedded within a broader framework of international law, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, international human rights treaties, and customary principles governing the protection of persons fleeing persecution and serious harm. Although international refugee law does not impose a formal mechanism for the allocation of responsibilities among states, the principle of international cooperation and burden-sharing has long been recognized as an essential component of refugee protection. Likewise, international human rights law, particularly the principle of non-refoulement and the prohibition of inhuman or degrading treatment, requires states to ensure effective access to asylum procedures and adequate reception conditions. Consequently, the management of migration within the European Union raises not only questions of internal solidarity among Member States but also issues relating to the Union's compliance with its international legal obligations. The European Commission presented the New Pact on Migration and Asylum, accompanied by a package of legislative provisions intended to reform the CEAS and establish a more comprehensive and resilient framework for migration management. Central to the Pact is the concept of solidarity, which is firmly rooted in Article 80 of the Treaty on the Functioning of the European Union (TFEU), according to which policies on border control, asylum, and immigration shall be governed by the principle of solidarity and the fair sharing of responsibility among Member States. The Pact seeks to reconcile this principle with the divergent interests of Member States through a

³ Anna Doliwa-Klepcka, "Joined Cases C-643/15 and C-647/15 Slovak Republic and Hungary v Council of the European Union," *Polish Review of International and European Law* 8, no. 2 (2019): 141–43, <https://doi.org/10.21697/priel.2019.8.2.07>; Anna Doliwa-Klepcka, "The New Pact on Migration and Asylum as a Response to Current Migration Challenges—Selected Issues," *Białostockie Studia Prawnicze* 26, no. 1 (2021): 14, <https://doi.org/10.15290/bsp.2021.26.01.01>.

system of "mandatory, flexible and needs-based solidarity," allowing states to contribute in different ways, including through relocation, financial assistance, or return sponsorships. Our analysis develops the Regulation EU 2024/1351⁴, adopted on 14 May 2024 and published to the EU official Journal on 22 May 2024⁵ and applicable since 12 June 2026⁶.

However, the extent to which the New Pact represents a genuine advancement in solidarity remains subject to debate. Critics argue that the Pact prioritizes migration control and externalization over responsibility-sharing and risks reproducing the structural inequalities that characterized the previous system. Moreover, the nature of solidarity mechanisms raises questions regarding their compatibility with broader principles of international refugee law and international cooperation. In this context, the concept of solidarity assumes a dual dimension: it functions both as a constitutional principle of EU law and as a reflection of the international legal expectation that states cooperate in addressing refugee movements and protecting fundamental rights.

This paper critically evaluates whether the New Pact on Migration and Asylum constitutes a meaningful strengthening of solidarity within the European Union or merely reframes existing arrangements without addressing their underlying deficiencies. The methodology used for the study combines legal analysis with qualitative policy analysis and a comparative historic evolution of the 2024 Pact on Migration and Asylum. The literature used for our study includes primary legal sources (supplemented by institutional documents of the European Commission, Council, the European Parliament), scholarly literature and policy papers related to specialized studies on refugee responsibility-sharing, the European asylum system and the new pact. By examining the legal foundations of solidarity in EU and international law, as well as the mechanisms introduced by the Pact, the paper assesses whether the new framework is capable of ensuring a fairer distribution of responsibilities while remaining consistent with the European Union's obligations under international refugee and human rights law and identify some changes introduced during the legislative process.

2. The Principle of Solidarity in International Law

The unprecedented influx of asylum seekers in 2015 – 2016 revealed the limitations of the Dublin system, which allocates responsibility for examining asylum

⁴ European Parliament and Council of the European Union, Regulation (EU) 2024/1351 of May 14, 2024 on Asylum and Migration Management, Amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and Repealing Regulation (EU) No 604/2013, *Official Journal of the European Union* L, 2024/1351 (May 22, 2024), <https://eur-lex.europa.eu/eli/reg/2024/1351/oj>.

⁵ Regulation (EU) 2024/1351, art. 85, <https://eur-lex.europa.eu/eli/reg/2024/1351/oj>; "Corrigendum to Regulation (EU) 2024/1351," *Official Journal of the European Union* L, 2025/90929 (November 25, 2025), <https://eur-lex.europa.eu/eli/reg/2024/1351/corrigendum/2025-11-25/oj>.

⁶ European Commission, Directorate-General for Migration and Home Affairs, "New Migration and Asylum Rules Enter into Application: What Is Changing?," June 12, 2026, https://home-affairs.ec.europa.eu/news/new-migration-and-asylum-rules-enter-application-what-changing-2026-06-12_en.

applications primarily to the Member State of first entry. This mechanism placed disproportionate burdens on frontline states such as Italy and Greece and exposed deep divisions among Member States concerning the sharing of responsibilities. More fundamentally, the crisis highlighted the persistent tension between national sovereignty and solidarity, raising broader questions regarding the normative foundations of international cooperation in refugee protection.

The concept of solidarity is closely linked to the distribution of responsibility. Solidarity occupies an increasingly important place within contemporary international law. Although solidarity is not universally recognized as an autonomous and binding principle, scholars have argued that it constitutes an emerging normative principle reflecting the growing interdependence of states and the collective nature of global challenges. Solidarity has evolved from a moral and political ideal into a principle capable of shaping obligations of cooperation within the international legal order⁷. Solidarity is identified as one of the structural principles underlying contemporary international law⁸, but at the same time solidarity serves as a mechanism for reconciling common interests with state sovereignty. In this sense, solidarity has acquired increasing relevance in areas characterized by shared responsibilities, including environmental law, development cooperation, disaster relief, and refugee protection.

International refugee law itself rests upon assumptions of international solidarity. The preamble to the 1951 Convention Relating to the Status of Refugees recognizes that the granting of asylum may place unduly heavy burdens on certain countries and that a satisfactory solution cannot therefore be achieved without international cooperation. Refugee protection presupposes cooperation among states and cannot function effectively in the absence of burden-sharing mechanisms⁹. Responsibility for refugee protection is inherently collective rather than exclusively national¹⁰. More recently, the Global Compact on Refugees adopted in 2018 reaffirmed equitable burden- and responsibility-sharing as a central objective of the international refugee regime, thereby strengthening the normative significance of solidarity in global migration governance.

Within the European Union, solidarity possesses a more explicit legal status. Article 80 of the Treaty on the Functioning of the European Union establishes that policies concerning asylum, immigration and border controls are to be governed by the principle of solidarity and fair sharing of responsibility among Member States. Solidarity constitutes a foundational value of European integration that generates reciprocal obligations among Member States¹¹. Nevertheless, the experience of the

⁷ Rüdiger Wolfrum, *Solidarity and Community Interests: Driving Forces for the Interpretation and Development of International Law* (Brill Nijhoff, 2021), 337, <https://doi.org/10.1163/9789004508330>.

⁸ Roger Blanpain, „Employment and Labour Law: The European Union” in Karel Wellens, ed., *International Law: Theory and Practice—Essays in Honour of Eric Suy* (Martinus Nijhoff, 1998), 401, <https://doi.org/10.1163/9789004640948>.

⁹ Guy S. Goodwin-Gill and Jane McAdam, with Emma Dunlop, *The Refugee in International Law*, 4th ed. (Oxford University Press, 2021), 389, <https://doi.org/10.1093/law/9780198808565.001.0001>.

¹⁰ James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd ed. (Cambridge University Press, 2014), 35, <https://doi.org/10.1017/CBO9780511998300>.

¹¹ Andrea Sangiovanni, “Solidarity in the European Union,” *Oxford Journal of Legal Studies* 33, no. 2

2015 refugee crisis demonstrated the difficulties associated with translating this principle into effective mechanisms of burden-sharing. The resistance of several Member States to the relocation schemes adopted in response to the crisis revealed the limits of European solidarity and the predominance of national interests. Even though constitutionally recognized, solidarity within the Common European Asylum System has remained largely aspirational and insufficiently institutionalized.

Central to the new system applicable since 12 June 2026 is “(...) *a mandatory, flexible and needs-based ‘solidarity mechanism’ to ensure Member States facing migratory pressure are not left alone, superseding the pre-existing voluntary system*”¹².

3. Solidarity in European Union Migration Governance

3.1. The concept of Solidarity in EU Migration Policy

The concept of solidarity is an old principle coming to our days since the Roman law of obligations. We find it at the term of *obligation in solidum*, which means the right of each creditor to request the payment of the entire of the debt¹³.

The main recognition of the principle of solidarity knows as such in international relations in the 21 century, we find in the United Nations Millennium Declaration, which stated that “*Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most*”¹⁴.

Solidarity is one of the foundational principles of the European Union and occupies an important place in EU integration and policymaking. Since the beginning of EU, the most prominent quotes that mentioned solidarity in the context of European integration is the Schuman Declaration of 1950: “[*Europe*] *will be built through concrete achievements which first create a de facto solidarity*”¹⁵

For the first time we find solidarity as such is mentioned clearly in 1992, at the Maastricht Treaty where the preamble states that the founding members have the will “*to deepen solidarity between their peoples while respecting their history, their culture and their traditions*”¹⁶. Further in the Treaty, there is a stipulation of the Union’s task

(2013): 216, <https://doi.org/10.1093/ojls/gqs033>.

¹² European Commission, “New Migration and Asylum Rules.”

¹³ Kurt Bayertz, “Four Uses of ‘Solidarity,’” in *Solidarity*, ed. Kurt Bayertz, Philosophical Studies in Contemporary Culture 5 (Kluwer Academic Publishers, 1999), 3, https://doi.org/10.1007/978-94-015-9245-1_1.

¹⁴ United Nations General Assembly, “United Nations Millennium Declaration,” A/RES/55/2, adopted September 8, 2000, issued September 18, 2000, para. 6, <https://docs.un.org/en/A/RES/55/2>.

¹⁵ Robert Schuman, “Schuman Declaration,” May 9, 1950, European Union, https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en.

¹⁶ *Treaty on European Union*, signed February 7, 1992, *Official Journal of the European Communities* C 191 (July 29, 1992), preamble, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11992M/TXT>.

“to organize, in a manner demonstrating consistency and solidarity, relations between member states and between their peoples”¹⁷ and for the Member States “to support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity”¹⁸.

Differently from the Maastricht Treaty, at the Amsterdam Treaty of the 2nd of October 1997, and enacted in the 1st of May 1999 the principle of solidarity is missing. At its place we find a declaration of voluntary work, and its important contribution to developing social solidarity¹⁹. Finally, at the Lisbon Treaty of 13th December 2007 and enacted from 1st of December 2009, solidarity was reintroduced more noticeable for his variety of references to the topic of solidarity. Solidarity took hold as a prerequisite of the Union’s functioning and success. The Treaty of EU states that the Union “shall promote economic, social, and territorial cohesion, and solidarity among Member States”²⁰.

Starting from the Schuman Declaration we can say that solidarity is a foundational principle of EU law, embedded in Article 80 of the Treaty on the Functioning of the European Union, which explicitly states that policies related to border control, asylum, and immigration shall be governed by the principle of solidarity and fair sharing of responsibility among member states²¹. However, indeed, it does not bind the state (even though the purpose of the Treaty was to develop a collaboration at the level of economic relationship between the founding members so the concept of solidarity was not yet really envisaged. However, in migration policy, solidarity has often been weak or inconsistently applied. The implications of the principle of solidarity in asylum and migration policies are not well defined in the Treaties. The Treaties foresee only solidarity and fair sharing of responsibility between the Member States and not towards refugees and migrants, referring explicitly to financial solidarity. Instead, the principle of solidarity includes other forms of solidarity like the relocation of refugees, the establishment of redistribution quotas, or operational support²².

Scholarly literature highlights that solidarity in EU asylum law has historically failed due to conflicting national interests and the absence of enforceable mechanisms. In migration policy, however, solidarity has often remained theoretical rather than operational. Thielemann argues that effective solidarity requires compulsory

¹⁷ *Treaty on European Union* (1992), art. A, para. 3.

¹⁸ *Treaty on European Union* (1992), art. J.1, para. 4.

¹⁹ *Treaty of Amsterdam*, signed October 2, 1997, *Official Journal of the European Communities* C 340 (November 10, 1997), Declaration no. 38 on Voluntary Service Activities, para. 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11997D/TXT>.

²⁰ *Consolidated Version of the Treaty on European Union*, *Official Journal of the European Union* C 326 (October 26, 2012), art. 3(3), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>.

²¹ *Consolidated Version of the Treaty on the Functioning of the European Union*, *Official Journal of the European Union* C 326 (October 26, 2012), art. 80, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

²² Daniel Thym and Evangelia (Lilian) Tsourdi, “Searching for Solidarity in the EU Asylum and Border Policies: Constitutional and Operational Dimensions,” *Maastricht Journal of European and Comparative Law* 24, no. 5 (2017): 611, <https://doi.org/10.1177/1023263X17741273>.

mechanisms, as voluntary contributions tend to fail in politically sensitive areas²³.

Recent judicial developments have seen the Court taking strides in enhancing the normative status of solidarity. Most notably, the General Court, in a seminal decision, *OPAL*, classified solidarity between the Member States as a general principle of EU law²⁴, while the Court of Justice identified solidarity as a fundamental principle of EU law²⁵. The Court of Justice also invoked the principle of solidarity in critical cases concerning the legality of the EU Budget Conditionality Regulation 2020/2092²⁶, referring to it as a fundamental principle. These judicial developments signal the Court's inclination towards attributing a prominent status to solidarity, elevating it to a principle of constitutional relevance within the EU legal order.

The solidarity mechanism was introduced as an attempt to provide the Member States more flexibility in approaching migration management²⁷. While Article 45(1)(b) of the 2020's Commission proposal included explicitly return sponsorship among available forms of solidarity, Regulation (EU) 2024/1351 does not include it as an autonomous solidarity measure; instead, Article 56(2) structures Annual Solidarity Pool around relocation, financial contributions, and alternative solidarity measures. Among the financial contribution, Article 66 of the Regulation provides that Member States are required to contribute to a mandatory fair-share mechanism.

In the context of migration governance, solidarity refers to cooperation and mutual support between member states in addressing migration pressures and humanitarian responsibilities. It implies that no single state should bear a disproportionate burden in managing asylum seekers and irregular migration flows. The principle also reflects the broader objective of maintaining unity and cohesion within the EU.

However, despite its legal recognition, solidarity has often remained politically contested. Different member states interpret solidarity in different ways, depending on

²³ Eiko Thielemann, "Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU," *JCMS: Journal of Common Market Studies* 56, no. 1 (2018): 63, <https://doi.org/10.1111/jcms.12662>.

²⁴ *Republic of Poland v European Commission*, Case T-883/16, judgment of September 10, 2019, ECLI:EU:T:2019:567, para. 69, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016TJ0883>.

²⁵ *Federal Republic of Germany v Republic of Poland*, Case C-848/19 P, judgment of July 15, 2021, ECLI:EU:C:2021:598, para. 38, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62019CJ0848>.

²⁶ European Parliament and Council of the European Union, Regulation (EU, Euratom) 2020/2092 of December 16, 2020 on a General Regime of Conditionality for the Protection of the Union Budget, *Official Journal of the European Union* L 433 I (December 22, 2020): 1–10, <https://eur-lex.europa.eu/eli/reg/2020/2092/oj>; *Republic of Poland v European Parliament and Council of the European Union*, Case C-157/21, judgment of February 16, 2022, ECLI:EU:C:2022:98, para. 147, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CJ0157>.

²⁷ Marianna Hu, *New Pact on Migration and Asylum* (policy paper, Consulting EUTH, n.d.), <https://www.migpolgroup.com/wp-content/uploads/2024/01/WG-3-New-Pact-Youth-Working-Group-Working-Policy-Paper.pdf>; European Commission, *Proposal for a Regulation on Asylum and Migration Management*, COM(2020) 610 final, September 23, 2020, art. 45(1)(b), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0610>; Regulation (EU) 2024/1351, arts. 56(2), 64–66.

their political interests, geographical positions, and domestic public opinion. Frontline states generally advocate for compulsory relocation and stronger burden-sharing measures, while several Central and Eastern European countries emphasize border protection and national sovereignty over migration policies.

3.2. Responsibility-Sharing and the Common European Asylum System

The Common European Asylum System (CEAS) was created by the EU since 1999; it provides common minimum standards for the treatment of all asylum seekers and applications. The CEAS consists of a legal framework covering all aspects of the asylum process and a support agency - the European Asylum Support Office (EASO). EASO was replaced by the European Union Agency for Asylum (EUAA) since 19 January 2022²⁸, when Regulation (EU) 2021/2303 on the establishment of the EUAA entered into force. However, in practice until 2022, the system was characterized by differing treatment of asylum seekers and varying recognition rates amongst EU Member States. This divergence is what encourages secondary movements and is partly due to the fact that the current rules grant Member States a lot of discretion in how they apply the common EU rules.

The CEAS was developed to harmonize asylum procedures and standards across the EU. Its primary objectives included ensuring fair treatment of asylum seekers, reducing disparities among national asylum systems, and preventing secondary movements within the EU. The most significant legal acts that constitutes it are the Reception Conditions Directive, the Qualification Directive, the Asylum Procedures Directive and the Dublin regulation.

Earlier, the European Asylum Support Office (EASO) was created in 2010 to facilitate administrative cooperation on asylum between Member States, ensuring the implementation of the CEAS. The EASO finds its legal basis in article 74 and 78 (1) and (2) TFEU. With the former activities the EASO has provided technical assistance to help Member State with the drafting of Country of Origin Information Reports and operational guidelines, which can be helpful for national authorities to use in drafting and implementing policies. While with the provision of operational support, the EASO has assisted Member State whose asylum and reception system suffer migratory pressure²⁹.

Another agency that offers operational assistance is the European agency Frontex, which is established with Regulation 2007/2004 in 2004. Frontex has been officially nominated as the European Border and Coast Guard Agency in 2016 with the Regulation 2016/1624. Prior to 2016 Frontex has served as an auxiliary institution to the Member States according to their activities of controls to their borders. It provided technical assistance and support expressed in terms of helping with the training of the

²⁸ European Union Agency for Asylum, “3.1. From EASO to the EUAA,” in *Asylum Report 2022*, May 2022, <https://www.euaa.europa.eu/asylum-report-2022/31-easo-euaa>.

²⁹ European Parliament and Council of the European Union, Regulation (EU) No 439/2010 of May 19, 2010 Establishing a European Asylum Support Office, *Official Journal of the European Union* L 132 (May 29, 2010): 11–28, <https://eur-lex.europa.eu/eli/reg/2010/439/oj>.

border and coast guards and this also “to promote solidarity between Member States, especially those facing specific and disproportionate pressures”³⁰. Frontex duties have since been reinforced with the establishment of the Border and Coast Guard³¹ and with the latest reform of 2019³². The European integrated border management presented in Regulation 2019/1896 of 13 November 2019 on the European Border and Coast Guard, repealing Regulation 2016/1624, operates through the work of the Border and Coast Guard which consists of the European Agency of Border and Coast Guard and the national authorities responsible for borders’ control, including coast guards.

The distribution of responsibilities and tasks is managed by Regulation 604/2013, the so-called Dublin III Regulation. Based on the Dublin Convention of 1990³³, the Dublin Regulation establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection by a third-country citizen placed in one of the Member States³⁴. Therefore, it redacts the hierarchy of responsibility for managing asylum requests. The core principle is that the Member State responsible for examining the asylum claim and providing with the reception of asylum seekers is the one in which the asylum seeker first entered in the EU area. The State of first entry will also be the one responsible for the assessment of the irregular third-country citizen’s application.

Despite these goals, the CEAS faced persistent criticism due to uneven implementation and unequal distribution of responsibility. The Dublin system, in particular, became one of the most controversial components of EU migration governance. Since asylum responsibility was tied to the country of first entry, border states carried the majority of the burden associated with registration, accommodation,

³⁰ European Parliament and Council of the European Union, Regulation (EU) No 1168/2011 of October 25, 2011 Amending Council Regulation (EC) No 2007/2004 Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *Official Journal of the European Union* L 304 (November 22, 2011): 1–17, art. 1(1), <https://eur-lex.europa.eu/eli/reg/2011/1168/oj>.

³¹ European Parliament and Council of the European Union, Regulation (EU) 2016/1624 of September 14, 2016 on the European Border and Coast Guard and Amending Regulation (EU) 2016/399 and Repealing Regulation (EC) No 863/2007, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, *Official Journal of the European Union* L 251 (September 16, 2016): 1–76, <https://eur-lex.europa.eu/eli/reg/2016/1624/oj>.

³² European Parliament and Council of the European Union, Regulation (EU) 2019/1896 of November 13, 2019 on the European Border and Coast Guard and Repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, *Official Journal of the European Union* L 295 (November 14, 2019): 1–131, <https://eur-lex.europa.eu/eli/reg/2019/1896/oj>.

³³ The Dublin Convention was signed in 1990 and entered into force in 1997. Responsibility under Dublin III is determined by a hierarchy of criteria; irregular entry is one criterion and is subject to specific conditions. See European Parliament and Council of the European Union, Regulation (EU) No 604/2013 of June 26, 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast), *Official Journal of the European Union* L 180 (June 29, 2013): 31–59, arts. 7–13, <https://eur-lex.europa.eu/eli/reg/2013/604/oj>.

³⁴ Regulation (EU) No 604/2013.

and asylum processing³⁵. In none of its provisions there is a mentioning of solidarity and fairness. The Dublin III Regulation provides an example that is in total counteracting with the principle of solidarity because it shifts the entire responsibility towards the bordering Member States³⁶. At the same time, it is not considering the preferences of the asylum seekers.

Currently, the EUAA provides increased operational assistance to Member States in the management of asylum and reception systems in emergencies³⁷.

4. The European Migrant Crisis and the Failure of the Previous System

4.1. Background of the 2015–2016 Migrant Crisis

The European migrant crisis was triggered by a combination of factors, including the Syrian civil war, instability in Afghanistan and Iraq, economic hardship in parts of Africa, and the activities of transnational smuggling networks. Between 2015 and 2016, more than one million migrants and asylum seekers entered the European Union, primarily through the Mediterranean and Balkan routes.

In 2015, more than one million migrants, asylum seekers, and refugees arrived in Europe. The majority arrived by sea. One-quarter of the sea arrivals in Europe in 2015 were children. The year 2015 saw the highest levels of forced displacement worldwide since World War II, and the European Union (EU) received more than 1.2 million first-time asylum claims, more than double the claims registered in 2014 (563,000)³⁸. In March 2016, the EU-Turkey Refugee Agreement sought to stop the flow of migrants into Europe.

The European migrant crisis has had significant social, political, and economic effects. Government budgets in Europe have been strained to manage the economic costs of domestic social spending and law enforcement in the near term³⁹.

Starting after the “refugee crisis” of 2015, the EASO covered an increasing operational role. Due to the structural deficits of the national asylum systems, faced with insufficient economic and human resources, the agency started to coordinate more actions on the ground, sending its functionaries and experts to help with more practical tasks. However, these measures remain emergency-driven responses⁴⁰.

In May of 2016, the European Commission has drawn up a proposal aimed at

³⁵ Regulation (EU) No 604/2013, art. 13.

³⁶ Evangelia (Lilian) Tsourdi, “Solidarity at Work? The Prevalence of Emergency-Driven Solidarity in the Administrative Governance of the Common European Asylum System,” *Maastricht Journal of European and Comparative Law* 24, no. 5 (2017): 667–86, <https://doi.org/10.1177/1023263X17742801>.

³⁷ European Union Agency for Asylum, “From EASO to the EUAA”; European Parliament and Council of the European Union, Regulation (EU) 2021/2303 of December 15, 2021 on the European Union Agency for Asylum and Repealing Regulation (EU) No 439/2010, *Official Journal of the European Union* L 468 (December 30, 2021): 1–54, <https://eur-lex.europa.eu/eli/reg/2021/2303/oj>.

³⁸ Harold Goldmeier, “European Migrant Crisis,” *EBSCO Research Starters*, 2015, accessed October 1, 2026, <https://www.ebsco.com/research-starters/history/european-migrant-crisis>.

³⁹ Goldmeier, “European Migrant Crisis,” sec. “Impact.”

⁴⁰ Tsourdi, “Solidarity at Work?,” 678.

transforming the EASO into an official agency called European Union Agency for Asylum (EUAA). The intention was to strengthen the instruments of both practical and scientific collaboration, endorse the legal norms on asylum, and monitor and examine the CEAS performance more attentively.

The system placed disproportionate pressure on border states and created incentives for secondary movements by asylum seekers seeking better economic opportunities or social conditions in northern and western Europe.

Attempts to introduce temporary relocation schemes in 2015 faced strong resistance from several member states, particularly Hungary, Poland, and the Czech Republic. These governments argued that mandatory relocation infringed upon national sovereignty and domestic security interests. The resulting disputes demonstrated the limitations of solidarity within the EU and highlighted the difficulty of achieving consensus on migration policy.

5. The New Pact on Migration and Asylum

5.1. Objectives of the Pact

The Pact on Migration and Asylum was presented by the European Commission as a comprehensive reform package aimed at creating a more predictable, balanced, and resilient migration management system. In its Pact the Commission admitted that *“the current migration system is insufficient in addressing these realities. In particular there is no effective solidarity mechanism in place and no efficient rules on responsibility”*⁴¹. The Pact seeks to establish a framework that combines responsibility, solidarity, border management, and efficient asylum procedures. The Pact could be considered to be composed of four main pillars: a mandatory solidarity mechanism, more comprehensive security procedures, new criteria for the distribution of migrants, and increased cooperation with third countries.⁴²

Its primary objectives include:

1. Strengthening the management of the EU's external borders.
2. Improving the efficiency and fairness of asylum procedures.
3. Enhancing cooperation among member states.
4. Preventing irregular migration and secondary movements.
5. Establishing a sustainable solidarity mechanism.
6. Accelerating the return of individuals without protection needs.

The Pact attempts to balance humanitarian obligations with security concerns while addressing the political divisions that emerged during the migrant crisis. It comprises a combination of legislative and non- legislative instruments. They are

⁴¹ European Commission, *Proposal on Asylum and Migration Management*, 2, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0610>.

⁴² Felipe Manchón, “El Pacto sobre Migración y Asilo ¿una nueva oportunidad para Europa?,” Documento de Opinión 152/2020 (Instituto Español de Estudios Estratégicos, November 27, 2020), 9–11, https://www.ieee.es/Galerias/fichero/docs_opinion/2020/DIEEEO152_2020FELMAN_migraciones.pdf.

intended to complement each other and create a comprehensive system – on the one hand, effective management of external borders, and on the other, coherent cooperation in the internal and external aspect of migration policy⁴³. Saying this, we should admit that a balance must be achieved between the demand for responsibility and solidarity in implementing a comprehensive policy towards migrants.

5.2. Solidarity Mechanism

The regulation on asylum and migration management introduces a “solidarity mechanism” designed to mitigate the unevenness of the EU asylum system. This mechanism should provide “effective support to Member States under migratory pressure and ensures swift access to fair and efficient procedures for granting international protection [...] The solidarity response should be designed on a case-by-case basis in order to be tailor-made to the needs of the Member State in question”⁴⁴. In practice, this means that Member States can either relocate and host asylum applicants from those countries under migratory pressure, or provide these countries with financial contributions.

The operation of this new mechanism is complex given the political scepticism within several national governments, such as the concerns of Poland and Hungary on the fairly re-distribution and the relocation of asylum seekers. The new solidarity mechanism aims to reflect the different challenges created by different geographical locations and ensures that irregular arrivals of refugees are handled by the EU as a whole⁴⁵.

One of the most innovative aspects of the New Regulation is the concept of a *permanent and mandatory, yet flexible and needs-based solidarity mechanism*⁴⁶. Before the end of each year, the Council of the European Union “*adopts an implementing act that sets up the annual solidarity pool, which includes the number of required solidarity contributions and specific contributions provided by each Member State. Contributions can include relocation, financial contributions or alternative solidarity measures, such as deployment of personnel or measures focusing on capacity building*”⁴⁷.

⁴³ Doliwa-Klepacka, “New Pact on Migration and Asylum,” 14.

⁴⁴ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, recital 22, *Official Journal of the European Union* L, 2024/1351 (May 22, 2024), <https://eur-lex.europa.eu/eli/reg/2024/1351/oj/eng>.

⁴⁵ Juan Santos Vara, “Flexible Solidarity in the New Pact on Migration and Asylum: A New Form of Differentiated Integration?,” *European Papers* 7, no. 3 (2022): 1252, <https://doi.org/10.15166/2499-8249/613>; Marguerite Arnoux Bellavitis and Ariadna Ripoll Servent, “The New Pact on Migration and Asylum in a Shifting Political Context: Depoliticization and Repoliticization in EU External Migration Policy,” *Mediterranean Politics* 31, no. 3 (2026): 631–40, <https://doi.org/10.1080/13629395.2025.2498846>.

⁴⁶ Regulation (EU) 2024/1351, arts. 56(2), 57(1), <https://eur-lex.europa.eu/eli/reg/2024/1351/oj>.

⁴⁷ European Union, “EU Asylum and Migration Policy—Member State Responsible for Examining Asylum Applications and New Solidarity Mechanism (from 2026),” *EUR-Lex Summaries of EU Legislation*, accessed October 1, 2026, <https://eur-lex.europa.eu/EN/legal-content/summary/eu-asylum->

The Pact also introduces special crisis-management procedures for situations involving mass arrivals or exceptional migration pressure. These measures allow for temporary derogations from standard asylum procedures and provide additional solidarity mechanisms during emergencies. One of the instruments in the Pact has been specifically designed to create mechanisms that enable Member States to respond to these crises within the framework of EU law: the Crisis and Force Majeure Regulation (hereinafter: CFMR or the Regulation)⁴⁸. This Regulation “*intends to enhance the preparedness and resilience of the Union to manage situations of crisis and to facilitate operational coordination, capacity support and the availability of funding in situations of crisis*”⁴⁹.

The crisis framework aims to improve preparedness and coordination while ensuring that member states can respond more effectively to sudden increases in migration flows. It reflects lessons learned from the 2015–2016 crisis, when the absence of coordinated mechanisms contributed to institutional fragmentation and political conflict. Thus, it is used in two cases, in massive arrivals and instrumentalization, both of them foreseen in the Regulation. This could be a helpful use because the crisis frequently have multi-dimensional character and are not seen just in mass arrivals. But sometimes the use of different concepts can produce vagueness.

6. Evaluating the Pact as a Tool of Solidarity

6.1. Strengthening Institutional Solidarity

The New Pact represents an important step to institutionalize solidarity within EU migration governance. By creating formal mechanisms for responsibility-sharing, the Pact acknowledges that migration management is a collective challenge requiring coordinated action. The New Pact provides a more effective and comprehensive management system with greater practical guarantees of solidarity between Member States.⁵⁰

The introduction of multiple forms of solidarity may increase participation by accommodating the diverse political and institutional realities of member states⁵¹. The solidarity mechanism could therefore improve cooperation by reducing resistance from governments unwilling to accept mandatory relocation quotas.

and-migration-policy-member-state-responsible-for-examining-asylum-applications-and-new-solidarity-mechanism-from-2026.html.

⁴⁸ European Parliament and Council of the European Union, Regulation (EU) 2024/1359 of May 14, 2024 Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum and Amending Regulation (EU) 2021/1147, *Official Journal of the European Union* L, 2024/1359 (May 22, 2024), recital 3, <https://eur-lex.europa.eu/eli/reg/2024/1359/oj>.

⁴⁹ Regulation (EU) 2024/1359, recital 5.

⁵⁰ Doliwa-Klepcka, “New Pact on Migration and Asylum,” 16.

⁵¹ Arne Niemann and Johanna Speyer, “A Neofunctionalist Perspective on the ‘European Refugee Crisis’: The Case of the European Border and Coast Guard,” *JCMS: Journal of Common Market Studies* 56, no. 1 (2018): 30, <https://doi.org/10.1111/jcms.12653>.

Moreover, the Pact reflects a broader shift toward integrated migration governance at the European level. The emphasis on common procedures, shared responsibilities, and crisis preparedness demonstrates an effort to strengthen EU cohesion and collective capacity.

The legislative instrument of the Pact includes several strong measures for this purpose, such as the obligation to screen all migrants arriving illegally, and to register all the applicants for international protection in the renewed Eurodac system, the mandatory border procedures for asylum and return.

Despite these positive developments, significant concerns remain regarding the effectiveness of the Pact's solidarity framework. The New Pact still maintains the fundamental components of the Dublin system, such as identifying the State responsible for processing asylum request⁵².

The absence of compulsory relocation quotas may allow member states to avoid meaningful responsibility-sharing during periods of intense migration pressure. States may prefer financial contributions or return sponsorship instead of accepting asylum seekers, thereby limiting the practical impact of solidarity measures. Additionally, political disagreements over migration remain deeply entrenched within the EU. Governments with strong anti-immigration positions may continue to resist collective approaches, potentially undermining the implementation of the Pact.

The increased focus on external border management and return policies may also shift attention away from long-term integration and humanitarian protection. Consequently, some observers contend that the Pact prioritizes migration control over refugee rights. As the commission itself asserts, the purpose is to carry out Search and Rescue with “[...] *coordination and respect for the fundamental rights of rescued people, including the principle of non-refoulement*”⁵³ yet this pre-admission screening blurs the line between entry refusal and asylum rights, raising concerns over access to effective protection⁵⁴. Accelerated border procedures raise concerns about compliance with international law. Amnesty International highlights risks related to detention and due process.

Furthermore, the effectiveness of return sponsorship depends heavily on cooperation with countries of origin and transit, which may be politically difficult to achieve. Without effective return agreements, the mechanism could face practical limitations.

The migration policy remains closely linked to domestic politics, national identity, and public security concerns. This demonstrates that solidarity within the EU is not only a legal principle but also a political process dependent on trust, cooperation,

⁵² Hu, *New Pact on Migration and Asylum*.

⁵³ European Commission, Recommendation (EU) 2020/1365 of September 23, 2020 on Cooperation among Member States Concerning Operations Carried Out by Vessels Owned or Operated by Private Entities for the Purpose of Search and Rescue Activities, *Official Journal of the European Union* L 317 (October 1, 2020): 23–25, recital 7, <https://eur-lex.europa.eu/eli/reco/2020/1365/oj>.

⁵⁴ Martin Bajada, “The New EU Pact on Migration and Asylum and Its Impact on the EU” (author-uploaded manuscript, July 2025), ResearchGate, https://www.researchgate.net/publication/393608535_The_New_EU_Pact_on_Migration_and_Asylum_and_Its_Impact_on_the_EU.

and shared commitment among member states.

7. Conclusion

The analysis of the New Pact on Migration and Asylum demonstrates that the question of solidarity within the European Union cannot be understood in isolation from the broader framework of international law. At the international level, migration and refugee governance is fundamentally shaped by the absence of a formal legal regime for the allocation of responsibility among states. While instruments such as the 1951 Refugee Convention and its 1967 Protocol establish core obligations of protection, most notably the principle of non-refoulement, they do not prescribe binding mechanisms for distributing asylum responsibilities. As a result, responsibility-sharing has developed primarily as a normative expectation rather than a legally enforceable rule, grounded in the principle of international cooperation and reinforced by instruments such as the Global Compact on Refugees.

Within this context, solidarity functions in international law as an emerging structural principle that reflects the interdependence of states in addressing global public goods, including refugee protection. However, its legal content remains indeterminate. This ambiguity is mirrored within the European Union, where Article 80 TFEU elevates solidarity to a constitutional principle but does not define its precise operational implications. Yet, the experience of the 2015–2016 refugee crisis exposed the structural limitations of this model, revealing that responsibility allocation based primarily on first-entry criteria is difficult to reconcile with equitable burden-sharing.

The New Pact on Migration and Asylum represents a further attempt to bridge the gap between the normative aspiration of solidarity and its practical implementation. By introducing a system of “permanent and mandatory, flexible and needs-based solidarity,” the Pact seeks to operationalize responsibility-sharing through a combination of relocation, financial contributions, return sponsorship, and operational support. In doing so, it acknowledges the political constraints inherent in achieving consensus among Member States while attempting to preserve the collective nature of EU migration governance.

The New Pact represents a significant step toward a more coordinated European migration policy. Its long-term success will depend on the willingness of member states to translate legal commitments into practical cooperation and to uphold the principle of solidarity as a core value of European integration.

In conclusion, the New Pact on Migration and Asylum offers a new framework for collective migration governance within the European Union. While it does not fully resolve the structural tensions inherent in EU migration policy, it provides an important foundation for future reforms aimed at balancing national sovereignty with collective responsibility in managing migration flows.

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