

**T**he increase in migratory flows towards the European Union (EU) during the 2014–2016 period was followed by a genuine political-institutional crisis and the paralysis of the Common European Asylum System. At the centre of the tensions was the Dublin Regulation and its impossible reform. In 2020, four years after the crisis, the European Commission presented the New Pact on Asylum and Migration, a composite policy instrument that, as Commission Vice-President Margaritis Schinas says, promises to ‘[put Dublin to bed](#)’ and to deeply reform the common asylum policy.

The reform, presented on Wednesday 23 September by Margaritis Schinas and the Commissioner for Home Affairs, Ylva Johansson, is complex, and the policy instruments proposed are numerous. In Schinas’s words, this reform can be likened to a [three-storey house](#): the first floor consists of establishing strong external relations with the countries of origin and transit to increase effective returns; the second floor provides robust management of the external borders; and the third consists of just internal rules for solidarity between member countries. While it would be worthwhile to analyse all three dimensions, the Dublin reform is by far the most contentious and is expected to lead to new tensions between the Member States in the coming years. In this article, therefore, we focus on the third dimension, which consists of measures aimed at strengthening solidarity between the Member States.

### **Solidarity according to the New Pact**

The new proposal provides for three main solidarity tools that are activated differently depending on the specific situation faced by one (or more) Member States. The first tool is that of relocation – an instrument that we know to be politically delicate, given the fierce opposition of Hungary, Poland, Slovakia, and the Czech Republic to any mandatory quota system. In fact, it is no coincidence that the Commission provides a financial incentive of €10,000 for each relocated asylum seeker<sup>[1]</sup>. The second tool, which was proudly paraded by Commissioner Johansson, is the so-called ‘sponsored return’ through which a member country supports one in difficulty by carrying out, in its stead, the activities necessary for the repatriation of individuals who are not eligible for international protection. If these activities do not end with the actual return of the individuals within 8 months, the sponsoring Member State should welcome them on its territory until the dossier is closed. Knowing the current status of actual returns, which relates to about one-third of the total issued injunctions to leave the territory, support of €10,000 euros also applies in the case of relocations to the

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sponsoring Member States[2]. The third, less publicized, instrument concerns support through capacity-building measures in the field of asylum, reception, and return and operational support measures. However, the proposal specifies that such measures must be 'in proportion to the contributions that the Member State would have made by means of the relocations'[3]. Indeed, since relocation is the most politically sensitive instrument, the Commission's effort has been to make all three instruments equally attractive. Likewise, the approach chosen by the Commission is aimed at gathering the consensus of the Member States on the New Pact through maximum flexibility in the choice between one instrument or another. Flexibility in the choice of measures and equivalence between them therefore go hand in hand and are essential for the success of this legislative proposal.

The activation of these three tools varies according to three specific situations, defined in the proposal: landings of migrants following search and rescue (S&R) activities, situations of migratory pressure (or risk of pressure), and crises. While the first leaves little room for interpretation, it is good to dwell for a moment on the latter two. Migratory pressure is defined as a situation where a large number of arrivals puts pressure on national asylum and reception systems. This situation is defined by the Commission itself, aided by the European Asylum Agency (yet to be created) and Frontex. Crisis, on the other hand, is described as an exceptional situation characterized by massive flows to the point of making asylum, reception, or return systems of a Member State non-functional, with potentially serious consequences for the common asylum system. Here, the assessment of crisis is also provided by the Commission.

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In each of these situations, a different solidarity mechanism is activated. Figure 1 below summarizes these schematically. In the case of landings following S&R activities, solidarity focuses on the relocation of asylum seekers who present a plausible need for protection. In fact, the Commission proposal provides - and this is a novelty - pre-screening at the border

which aims to assess the admissibility of an asylum request. For example, those coming from a country considered safe will see their application evaluation fast-tracked (and closed in a maximum of 12 weeks). On the other hand, those who have a higher probability of seeing their request recognized will have the application evaluated through the ordinary procedure (which provides for a maximum evaluation time of 6 months, further extendable by 3 months). In the first situation, solidarity mainly concerns relocation and operational support, and it is only at a later stage, if the commitment of the Member States is insufficient, that Member States can contribute through a sponsored return.

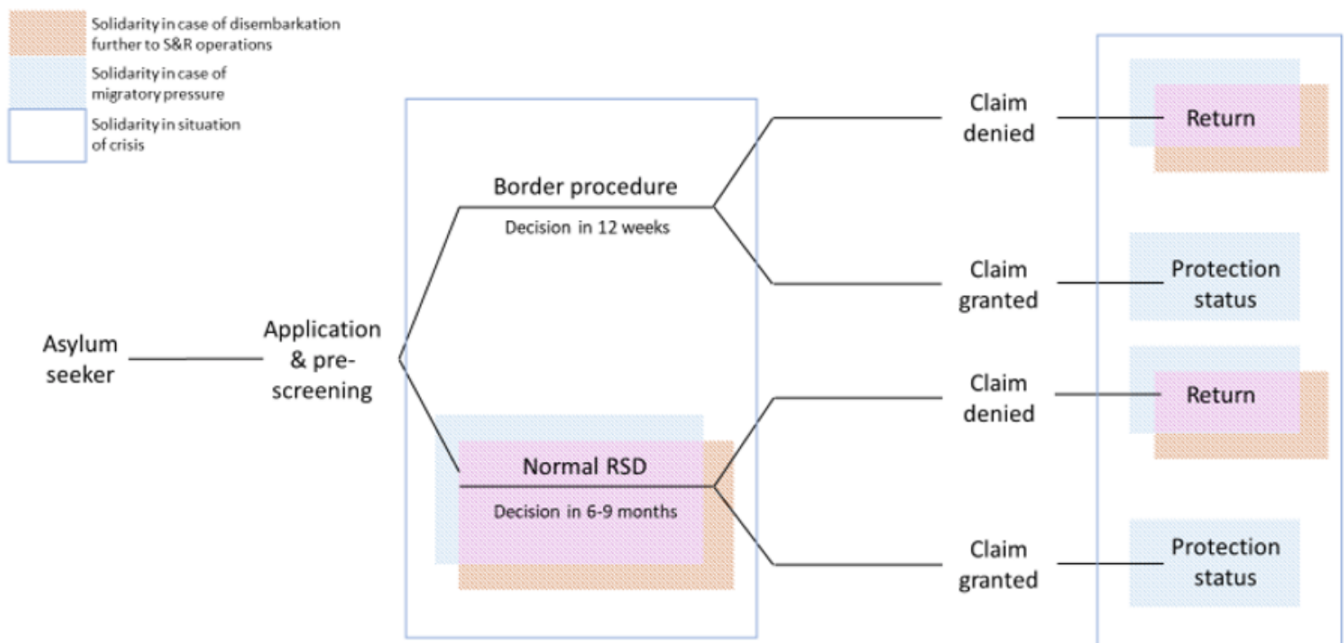


Figure 1. Relocation or sponsored return? The activation of two tools in the situations provided for by the Asylum and Migration Pact

Should a country find itself in a situation of migratory pressure, the mechanism provides for the possibility of relocating asylum seekers by following the normal procedure: i.e., those with a high probability of successful application, but also refugees who have obtained status in the three previous years. This situation also includes sponsored return and operational support.

Finally, the crisis widens the range of possibilities: the relocation measures also include those engaged in the border procedure and the sponsored return measures, for which the timing is

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halved (from 8 months to 4). Operational support, on the other hand, aimed at longer-term measures, is not allowed.

### **What to make of this new Pact?**

Political science scholars know this all too well: in brokering a consensus when the preferences are so far apart, it is necessary to move the agreement towards the lowest common denominator – this is how the trade-off between what is desirable and what is feasible manifests itself. In preparing this Pact, the Commission sought to create a balance between antipodean positions: those of the Mediterranean countries, which have been asking for more solidarity for years, and those of countries viscerally opposed to welcoming asylum seekers and/or refugees to their territories. The result is a set of measures that leaves everyone a little dissatisfied but not to the point of rejecting the proposal – at least, this is what Commissioner Johansson hopes. Numerous aspects deserve careful consideration but, with regard to solidarity between member countries, there are two questions we could ask ourselves: does this proposal call the Dublin system into question? And, if so, at what (human) cost?

*The Directive also provides a mechanism for sharing the burden voluntarily*

The Dublin method considers a state responsible for an asylum application if it is the one in which the entry took place; this method has long been criticized because it places the burden of the common asylum system on the shoulders of some countries for reasons merely related to their geographical position. The new proposal, not dissimilar from the Dublin Regulation currently in force, proposes a hierarchy of criteria to determine the state which is in charge; in this, the proposal does not propose change much the state of affairs. For more details, we invite the reader to compare Chapter 3 of the Dublin Regulation<sup>[4]</sup> and Chapter 2 of the proposal under consideration. What changes, instead, are the Union's tools to cope with migratory pressures or with any crisis event. So far, the only instrument available has been the Temporary Protection Directive<sup>[5]</sup> – a tool designed in response to the migratory flows

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from the former Yugoslavia in the 1990s and which, in practice, guarantees indiscriminate protection status in the event of massive migratory flows. The Directive also provides a mechanism for sharing the burden voluntarily. The problem with this instrument, however, is the highly political procedure through which it is triggered: a decision by a qualified majority in the Council, based on a proposal from the Commission after the latter has examined the request of the Member State in difficulty. In fact, this mechanism was never activated, despite the requests of Malta and Italy during the 'Arab Spring' in 2011. At the time, it was the [Commission itself](#) that, betting on the impossibility of reaching a majority in the Council, stopped the procedure. With the New Pact, the Union would be equipped with a more streamlined mechanism to cope with any crises and, therefore, from this point of view, the Commission proposal introduces something new.

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Last, we consider the question of the human costs of the proposal. The consequences of a sub-optimal agreement are manifold in terms of public policy, but we will limit ourselves here to brief considerations in terms of human rights. The right to asylum is an individual right; it is not a collective right. Every person has the right to seek protection from persecution in other countries and, consequently, every person has the right to have their asylum application assessed based on its merits. The new Pact proposed by the Commission raises some questions in this regard, especially with the introduction of pre-screening, aimed at speeding up the procedure for those who have a low probability of being considered a refugee. More precisely, it is how this probability is assessed that raises some perplexities: in a crisis situation, for example, a person's request will take the (fast) lane of border procedure if it comes from a country for which the rate of recognition of international protection at EU level is less than 75% - a very high percentage that even Syria did not reach in 2015 (see Figure 2 below)[6].

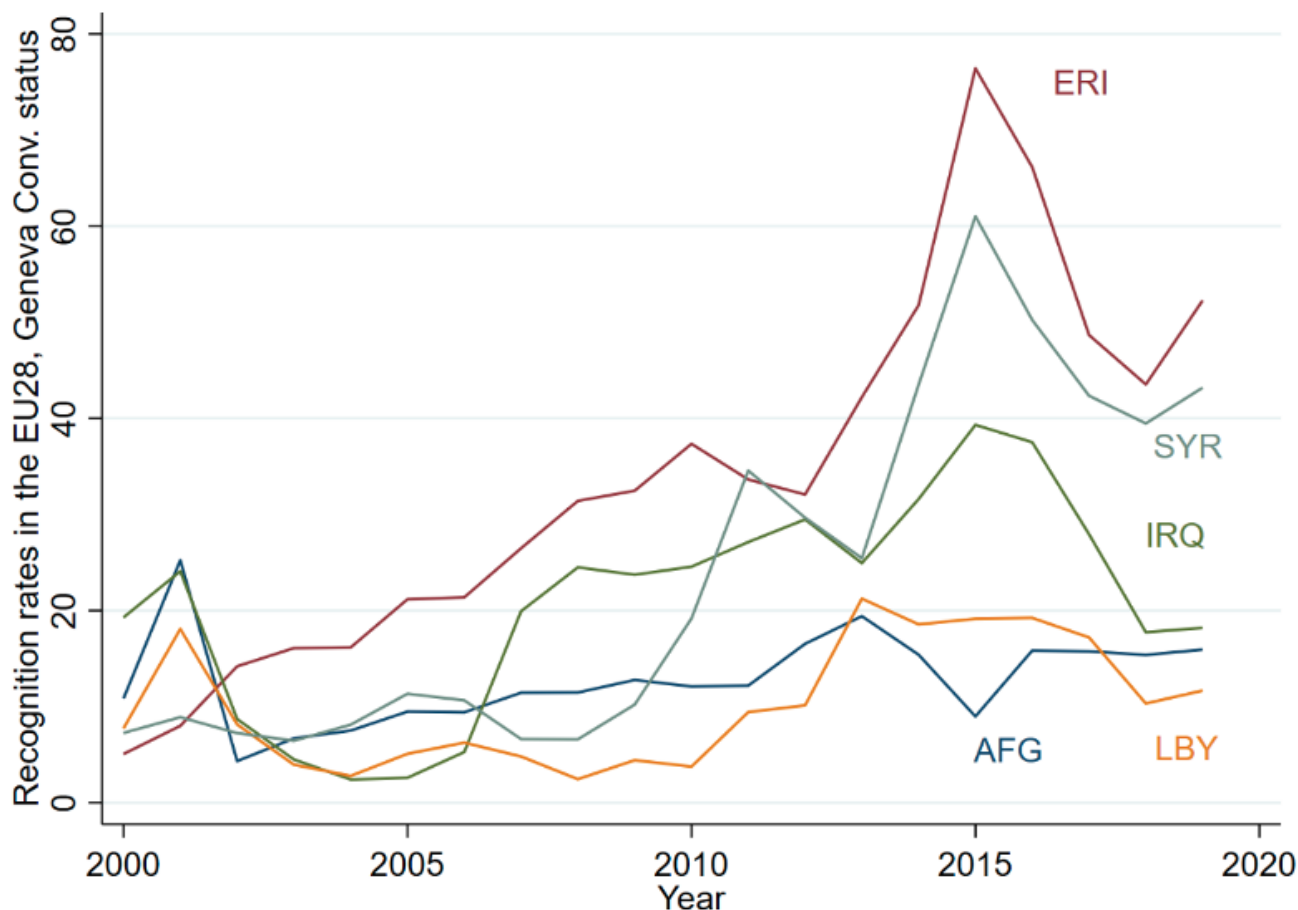


Figure 2. Recognition rates for five countries of origin in the EU28 from 2000 to 2019 (source: elaboration by the author on UNHCR data. Note: Country names use ISO-3166 alpha-3 abbreviations.)

This practice tends to attribute the characteristics of a specific country of origin to the people who come from that country and carries with it the risk of not dutifully considering the merits of the individual asylum application if strong procedural safeguards are not integrated. It is precisely for this reason that the Commission's proposal on screening provides for the creation of fundamental rights monitoring mechanisms. However, because these mechanisms are national, it is relevant to question their independence from the political preferences of national governments.

## Footnotes

[1] See article 72.2 of the proposal for a Regulation on asylum and migration management; COM(2020) 610 final, p. 93.

[2] Article 72.2, COM(2020) 610 final, p. 93.

[3] Article 48.2, COM(2020) 610 final, p. 77.

[4] Regulation (EU) 604/2013.

[5] Directive 2001/55/EC.

[6] The estimates presented in figure 2 consider all the decisions (on first-time applications and appeals) for the refugee status in a year. They could vary according to the calculation method used to compute the recognition rates.

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