



**UNIVERSIDADE CATÓLICA PORTUGUESA**

# **The International Protection Regime in EU Refugee Law**

Marta Carmezim Ferreira Saraiva de Aragão

Master of Laws

Porto Faculty of Law

2024





**UNIVERSIDADE CATÓLICA PORTUGUESA**

# **The International Protection Regime in EU Refugee Law**

Marta Carmezim Ferreira Saraiva de Aragão

Supervisor: Professora Dr.<sup>a</sup> Benedita Menezes Queiroz

Master of Laws

Porto Faculty of Law

2024

*Our Inheritance was left to us by no testament.*

René Char

## **Acknowledgements**

Firstly, I would like to thank my supervisor, PhD Professor Benedita Menezes Queiroz for all the support and assistance throughout the process of writing the thesis. Without her help and orientation, I wouldn't be able to achieve the objectives proposed.

To my parents and sister Margarida, the most important people in my life, I owe them a huge thank you for the consistent presence, love, and support, for always listening to my doubts and appeals, and for contributing for my education making it possible for me to be here writing this work.

I would also like to thank my grandparents for their comprehensiveness, support, and love as well as my uncles, and cousins Rita and Teresinha for their presence and partnership during the Thesis.

To my friends, especially Beatriz Veloso, my work partner, that accompanied me from the beginning of this journey, always available to discuss with me ideas, hear my views on the subject, giving me very useful advice, for always being a supportive friend.

Finally, to many more years of learning, acquiring knowledge and wisdom (I hope!) and my last wish is that in the future, we could all live in an upright, comprehensive, compassionate world, especially concerning the more vulnerable in which they are included migrants and refugees, in Europe.

## Resumo

A crise migratória de 2016 na Europa, foi o resultado de um sistema de asilo ineficaz aliado à falta de cooperação entre os Estados Europeus, tendo por consequência dado origem a movimentos migratórios secundários por parte de requerentes de asilo que viram negados o estatuto de refugiados.

De acordo com o Regulamento de Dublin, o critério de referência usado para determinar o país responsável por analisar o pedido de asilo em questão é o critério do primeiro país de entrada do requerente de asilo.

Contudo, tal regra revelou-se ineficaz na medida em que, face ao elevado fluxo de refugiados na Europa, os sistemas de asilo dos países europeus, especialmente os do Mediterrâneo ficaram sobrecarregados o que levou a que os requerentes de asilo tivessem de requerer asilo mais do que uma vez noutros Estados que não o designado, conforme o critério estabelecido no Regulamento de Dublin.

A presente dissertação tem assim em vista analisar o Novo Pacto em matéria de Migração e Asilo, proposto pela Comissão Europeia em 2020, mais especificamente o Regulamento de Gestão do Asilo e da Migração, com foco na problemática da solidariedade, que é nos dias de hoje uma questão muito debatida no contexto europeu. Para além disso, a presente análise tem como objetivo aferir se o Pacto constitui uma resposta adequada e suficiente à proteção internacional.

**Palavras-chave:** Refugiados; Crise Migratória; Proteção Internacional; Direito da União Europeia; Sistema Europeu Comum de Asilo; Pacto da UE em matéria de Migração e Asilo.

## **Abstract**

The 2016 migration crisis in Europe was the result of an ineffective asylum system combined with a lack of cooperation between European States, which led to secondary migration movements of asylum seekers who were denied refugee status.

According to the Dublin Regulation, the reference criterion used to determine the country responsible for examining the asylum application in question is the criterion of the asylum seeker's first country of entry.

However, this rule proved to be ineffective as, faced with the high influx of refugees in Europe, the asylum systems of European countries, especially those in the Mediterranean, became overloaded, which led to asylum seekers having to apply for asylum more than once in States other than the designated by Dublin, according to the criteria established in the Regulation.

This dissertation thus aims to analyze the New Pact on Migration and Asylum, proposed by the European Commission in 2020, more specifically the Asylum and Migration Management Regulation, focusing on the problem of solidarity, which is nowadays a highly debated issue in the European context. In addition, this analysis aims to assess whether the Pact is an adequate and sufficient response to international protection.

**Keywords:** Refugees; Migration Crisis; International Protection; European Union Law; Common European Asylum System; EU Pact on Migration and Asylum.

## **Table of Contents**

Acronyms and Abbreviations .....	9
Introduction .....	10
1. International and European Legal Framework on Refugee Law .....	11
1.1. The CEAS and Its Fragilities: The Failure of the Dublin System .....	11
1.2. The International Protection in EU Law .....	16
2. The New EU Pact on Migration and Asylum .....	19
2.1. General Context .....	19
2.2. Analysis of the Asylum and Migration Management Regulation Proposal	24
2.3. The EU Proposal for a New Common Policy: The Solution or a Failed Attempt for International Protection? .....	28
2.4. Future Prospects on Migration for the EU .....	36
Conclusion .....	39
Bibliography .....	41
Case Law .....	47

## **Acronyms and Abbreviations**

APD	Asylum Procedures Directive
AMMR	Asylum and Migration Management
CEAS	Common European Asylum System
EU	European Union
MS's	Member States
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations

## **Introduction**

The International Protection Regime in EU Law has evolved much since several decades ago as it is crucial in respect to the recognition of asylum seekers and refugees' rights. Nowadays, this regime is present in many human rights diplomas, and regarding the European refugee law framework, is part of the Common European Asylum System.

However, the refugee regime has been facing a period of crisis, as each time more its provisions are being put into question, so as its effectiveness. The complex challenges that refugees are constantly facing are due to, not only conflicts, but also at many levels, namely, economic, social, and environmental with the climate change effects. In this regard, it is up to the European Union and Member States to adapt the refugee law framework considering the reality of refugees and the issues that appear as a consequence of the failure of the actual asylum system.

There have been alternatives to the present regime, such as the case of the EU Pact on Migration and Asylum, proposed by the European Commission in 2020. This new diploma is intended to reform the common European asylum system by establishing a new solidarity mechanism that aims to replace the already existing one. Also, it aims to solve the issue of the absence of solidarity among EU Member States and unequal distribution of responsibility.

The present Thesis is structured in many chapters. Firstly, I will refer to the importance of the International and European refugee law framework, the CEAS and its weaknesses, that was the main reason behind the failure of the Dublin system, then, the analysis of the EU Pact on Migration and Asylum, more specifically the Asylum and Migration Management Regulation, concerning the issue of solidarity.

With the present work, I aim to provide a deep analysis on a crucial matter in the European Union, as the period of crisis we are now witnessing is characterized by absence of solidarity and distrust, as this has been the position of the European States towards refugees. It is also a period of uncertainty concerning the discussions that remain around the EU Pact on Migration and Asylum and its Regulations.

The answer to the following research question, "Is the New Pact on Migration and Asylum under the EU's legal framework, a successful response to international protection of asylum seekers or refugees, along with what future prospects may be considered to improve the effectiveness of EU's policies towards refugees?" aims to mostly be reflected given the current European context, on the future of refugees in Europe.

# 1. International and European Legal Framework on Refugee Law

## 1.1. The CEAS and Its Fragilities: The Failure of the Dublin System

The Common European Asylum System is a system that encompasses several EU legislations, including Directives such as the Temporary Protection Directive, the Asylum Procedures Directive, the Reception Conditions Directive, among other, that will be further developed in the following section. Furthermore, a key element of the CEAS is the Dublin III Regulation<sup>1</sup>, adopted in 2013, that in accordance with Article 1, “lays down 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 (‘the Member State responsible’)”<sup>2</sup>.

Its objective falls on the establishment of a common framework for asylum in the EU, so as “to ensure quick access to the asylum procedures and the examination of an application on the merits by a single, clearly determined EU country”<sup>3</sup>. The main principle that this Regulation establishes is the first country of entry rule, as in accordance with Article 7 (2) of the present diploma “The Member State responsible (...) shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State”<sup>4</sup>.

However, within the refugee crisis in 2015, several flaws emerged which were also reflected in the European legal framework on refugees, as the present Regulation was the major contributor of the deficiencies of the European refugee system, namely, the absence of solidarity and responsibility-sharing among Member States (disrespecting the principle of solidarity and fair-sharing enshrined in Article 8 of the TFEU<sup>5</sup>), as in some cases the issue in establishing effective mechanisms to ensure so, is due to the “increasingly xenophobic and nationalist politics”<sup>6</sup> and the lack of concern by countries such as the case of Greece and Italy<sup>7</sup>, so as the fact that “EU Member States were extremely reluctant to commit to more meaningful responsibility-sharing arrangements, (...)”<sup>8</sup>.

---

<sup>1</sup> (Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013).

<sup>2</sup> *Ibidem*.

<sup>3</sup> (Country responsible for asylum application (Dublin Regulation)).

<sup>4</sup> (Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013).

<sup>5</sup> (Consolidated Version of the Treaty on the Functioning of the European Union, 2009).

<sup>6</sup> (Long, 2021, p. 1108).

<sup>7</sup> *Ibidem*.

<sup>8</sup> *Ibidem*, p. 1107.

Also, the fact that “(...) the Dublin system and its premise of the existence of equal standards in EU Member States is increasingly questioned by both national and European Courts from a human rights perspective (...)”<sup>9</sup>. In fact, one of the consequences of the crisis of the refugee system was the fact that it led to a huge discrepancy regarding the European countries’ national asylum systems, more specifically, its migration procedures, and its reception conditions. As a result, there has been an increasing number of secondary movements of asylum seekers and refugees, so as the fact that “(...) asylum seekers as well as persons who have obtained a protection status in some Member States increasingly resort once more to smuggling networks to travel within the EU as they are not allowed to do so legally under the Dublin Regulation (...)”<sup>10</sup>.

These consequences led, furthermore, to a sense of lack of trust in European Member States and the fact that “The lack of a truly European response to the situation in the Mediterranean and the arrival of hundreds of thousands of refugees at the external borders is worrying in this respect and illustrates a disbelief in the viability of a common system”<sup>11</sup>.

Since the 2015 crisis, some of the policies established by frontline countries involved closing their borders and implementing restrictive measures as a way of preventing the entrance of refugees in the countries in question, as these must include and take more into account their rights so as to subject several forms of assistance to third-countries, by destination and transit States on the establishment of a series of measures concerning the protection of the rights of refugees in its legislations<sup>12</sup>.

Due to its structural weaknesses and inefficiency, the Dublin III Regulation was highly criticized. Several criticisms were made to the system, namely “A further cause of the poor implementation of the Dublin system appears to be insufficient cooperation among the Member States. That, too, has its cause deep in the structure and ethos of the Dublin system”<sup>13</sup>. This is one of the main issues associated with the Dublin system, especially regarding the cooperation within the framework of solidarity and burden sharing, between EU Member States.

---

<sup>9</sup> (Pollet, 2016, p. 95).

<sup>10</sup> *Ibidem.*, p.94.

<sup>11</sup> *Ibidem.*, p.96.

<sup>12</sup> (Frelick, Kysel, & Podkul, 2016).

<sup>13</sup> (Maiani, The Dublin III Regulation: A New Legal Framework for a More Humane System?, 2016, p. 110).

Also, the fact that “(...) the readiness of Member States to contribute to sustainable capacity-building through practical cooperation and other forms of EU solidarity has demonstrated limits, notably where other national interests are in play”<sup>14</sup>. This means that the sovereignty of States was one of the arguments used as a justification by EU Member States in closing the borders to the arrival of asylum seekers.

The fact that European Member States had distinct positions, as for instance, Poland and Hungary, which are two of the countries that constitute the Visegrád Group are against accepting any kind of solidarity mechanism<sup>15</sup>, contrary to the position of, for example, Spain, France, beyond others, concerning the issue of “solidarity for asylum in the EU, included the circumstances where it is needed or deserved and the extent to which it should be conditioned upon a demonstration of readiness to assume responsibility for fulfilment of EU obligations”<sup>16</sup>. The EU Member States’ different points of view on this topic is one of the reasons that contributed to the failure of the CEAS, as it is reflected by the absence of cooperation among them and the clear disinterest that are manifested in their measures that run counter to the aim of establishing a common asylum policy based on values such as solidarity and mutual understanding.

The *M.S.S. v Belgium and Greece* was an important ruling regarding the matter of the Dublin system’s fragilities, as, by addressing the deficiencies of, in the present case the Greek’s asylum system namely, “(...) insufficient information for asylum seekers about the procedures to be followed; (...) no reliable system of communication between the authorities and the asylum seekers; (...) and excessively lengthy delays in receiving a decision”<sup>17</sup>., the Court concluded that Greece did not have an effective asylum system that would guarantee the safeguarding of the rights of asylum seekers, it led to its violation of Article 3 of the European Convention on Human Rights in which there is enshrined the Prohibition of Torture<sup>18</sup>.

This ruling revealed the flaws of the Dublin Regulation, as demonstrated by the unequal burden sharing regarding certain countries including Greece and the absence of solidarity among Member States, which led to the violation of fundamental rights of asylum seekers, in the present case. Also, “(...) where the Dublin responsibility criteria designate another State as responsible, the system allows the hosting Member State to

---

<sup>14</sup> (Garlick, 2016, p. 170).

<sup>15</sup> (Zachová, 2023).

<sup>16</sup> (Garlick, 2016, p. 160).

<sup>17</sup> (*M.S.S. v. Belgium and Greece*, Judgment, 2011), paragraph 301.

<sup>18</sup> (European Convention on Human Rights, 1950).

transfer the asylum-seeker to the responsible State – an entitlement that was considered to be unfettered, until the European Court of Human Rights (ECtHR) determined in *M.S.S.* that such an approach could lead to serious violations of human rights, including *refoulement*<sup>19</sup>. This case is essential to refer to as it emphasized the call for reform of the European asylum system, and it shows how the first country of entry rule is not enough to guarantee the protection of the rights of asylum seekers.

Another ruling that was the reflection of the fragilities concerning the Dublin III Regulation, was the *CK and others v Republika Slovenija*<sup>20</sup>, which respects on one side, C.K., H.F., and their child A.S., and on the other side, the Republic of Slovenia, “(...) concerning the transfer of these persons to Croatia, designated as the Member State responsible for examining their application for international protection in accordance with the provisions of the Dublin Regulation”<sup>21</sup>., and in which the Court stated that in the situations in which a physically or mentally ill asylum seeker being relocated “(...) would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;”<sup>22</sup>. This judgment was important as it demonstrated one of the main weaknesses of the present Regulation, concerning its implementation.

As we can see in the past paragraphs, the Dublin system has failed due to many reasons, namely the unequal distribution of the burden regarding asylum seekers that were seeking protection in Mediterranean countries, mostly in Greece, Italy, Malta, Spain, beyond others. Also, the absence of solidarity among European Member States, especially the ones on the Western Europe, led to the fact that the counties referred became overburdened with the sudden intense influx of refugees. The consequences for asylum seekers or refugees were catastrophic as the asylum applications began to fall behind a lot and asylum seekers had no choice but to apply in more than one country, in the hope of obtaining the status of refugee, and international protection.

Through the past years, however, efforts have been made by the States along with international institutions in providing a response to the impasse of managing refugee’s flows, by making European policies and laws that would address the issue of irregular

---

<sup>19</sup> (Garlick, 2016, p. 165).

<sup>20</sup> (C.K., and others v Republika Slovenija, Judgment, 2017).

<sup>21</sup> *Ibidem.*, paragraph 2.

<sup>22</sup> *Ibidem.*, paragraph 96, second subparagraph.

migration. Several EU policies included the European Agenda on Migration (2015) that was created with the aim to tackle the refugee crisis, “addressing the asylum and migration challenges as well as defining steps to be taken to ensure strong borders, fair procedures and a sustainable system able to anticipate future problems (...)”<sup>23</sup>. It also focuses on safeguarding European countries’ borders, preventing irregular migration and the need for “the EU to establish a truly common European asylum system based on harmonized procedures throughout the EU. This includes uniform asylum status and mutual recognition of asylum decisions, shared responsibility, and efforts with respect to relocation and resettlement, (...)”<sup>24</sup>.

In June 2016, there was the proposal by the European Commission on the establishment of a Partnership Framework on Migration with third countries under the European Agenda, as a proposed solution for the issue of irregular migration as “It should help develop safe and sustainable reception capacities and (...) must create genuine prospects of resettlement to the EU to discourage irregular and dangerous journeys”<sup>25</sup>.

The proposal of the New Partnership Framework on Migration also referred to the EU-Turkey Agreement (March 2016), aimed at fighting against irregular migration by refugees that pass-through Turkey to reach to the EU. “Turkey was at the time the largest refugee-hosting country in the world (...) with the vast majority of its approximately 3 million refugees coming from Syria, though there were also large numbers of Iraqis, Iranians, and Afghans”<sup>26</sup>. The 2015 refugee crisis resulted in frontline countries, such as for instance, Italy and Greece, became overburdened by the huge number of refugees that were arriving from the Mediterranean Sea migratory route. The EU-Turkey Agreement in 2016 was an attempt by the EU to restrict migration especially in the countries referred, although it led to several issues, and criticisms by international actors.

Also, to refer the importance of both the New York Declaration for Refugees and Migrants, and the Global Compact on Refugees. These are two international agreements adopted by the EU in 2018, with the purpose of providing a comprehensive framework on refugees and both expressed the commitment and will of States, regarding solidarity

---

<sup>23</sup> (European Agenda on Migration, s.d.).

<sup>24</sup> (Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration', 2015).

<sup>25</sup> (Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration, 2016).

<sup>26</sup> (Terry, 2021).

and responsibility-sharing in this matter. Regarding the first, “States have accepted common responsibility for the management of great flows of refugees and migrants in a humanitarian sensitive and human-oriented way”<sup>27</sup>. However, it also contained “(...) that the present legal solutions accepted by the international community are already insufficient, hence, it is necessary to develop new forms of sharing of burdens and responsibilities for migration issues”<sup>28</sup>.

Finally, the instruments referred to not only were essential for the EU community to recognize the need for an in-depth discussion on the reform of the CEAS, but also contributed to a major attention on the weaknesses of the European asylum regime. Through the years, States recognized the urgency to find an effective response to the large scale of refugees worldwide, addressing the complex challenges that stem from migration. Concerning the current refugee crisis, is ongoing a process of reform of the Common European Asylum System, as the ineffectiveness of the European instruments to mitigate the current crisis, the weaknesses of the EU’s system so as the lack of political will by European governments, led to the proposal by the European Commission of the New Pact on Migration and Asylum in 2020, which will be discussed and deeply analyzed in the further chapter.

## **1.2. The International Protection in EU Law**

Since the Second World War, in the light of the exponential flow of refugees, mainly in Europe, International and European legal instruments regarding refugee law were created with a view to the international protection of asylum seekers as each time more they must be constantly updated due to the necessity to respond to the complex and challenging issues that refugees are facing worldwide.

Concerning the European legal framework on refugee law, it is important to highlight several instruments such as the European Charter of Fundamental Rights, in which there are enshrined the main rights and values such as, the right to asylum in Article 18., and also Article 51 (1), which enshrines the scope of the provisions of the Charter that are applicable to not only European institutions but also Member States in the

---

<sup>27</sup> (Mikolajczyk, 2020, p. 174).

<sup>28</sup> Milner, J. (2016, December). When Norms Are Not Enough: Understanding the Principle and Practice of Burden and Responsibility Sharing for Refugees (‘Global Leadership and Cooperation for Refugees Series’, Paper No. 2). Cited in (Mikolajczyk, 2020, p. 175).

situations in which they act under EU Law, as is their obligation to observe the principles and rights stipulated in the Charter<sup>29</sup>; the European Convention of Human Rights in which there are present the core principles of the European Union; the Treaty of the Functioning of the European Union, more specifically, Articles 67 (2), 78 and 80, as in the latter is enshrined the principle of solidarity and fair-sharing, among European Member States<sup>30</sup>. These referred articles are important to refer to as they give the EU the authority to legislate in this matter.

Also, to refer the significant contribution of the Common European Asylum System to the development of the EU refugee regime, namely, the Qualification Directive 2011/95/EU that respects the “standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees and or for persons eligible for subsidiary protection, and for the content of the protection granted”<sup>31</sup>. There are certain provisions of this directive to recall namely, Article 2 (d) and (a), in which there is the definition of refugee and international protection, respectively<sup>32</sup>., in which is part of this definition the refugee status, referred in line (e), and, subsidiary protection, enshrined in line (g) of the provision<sup>33</sup>.

Between 1999 and 2005, there was the adoption of many European legal instruments regarding the protection of refugees, as seen earlier, as many of them were part of the Common European Asylum System, including the Temporary Protection Directive. The first was initially created with the aim of managing the entrance of refugees in EU countries, as it “is based on the understanding that the EU is an area where countries share the same fundamental values and therefore need to have a common approach to implement transparent, effective and equitable procedures”<sup>34</sup>.

In connection with present diploma, there is the Directive 2013/32/EU, as in accordance with Article 1, “establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU”<sup>35</sup>. In accordance with Article 3 (1), the provisions of the present Directive concerns asylum seekers applications “(...)

---

<sup>29</sup> (Charter of Fundamental Rights of the European Union, 2000).

<sup>30</sup> (Consolidated Version of the Treaty on the Functioning of the European Union, 2009).

<sup>31</sup> (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 ).

<sup>32</sup> *Ibidem*.

<sup>33</sup> *Ibidem*.

<sup>34</sup> (Nunzio, 2023, p. 42).

<sup>35</sup> (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)).

made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection”<sup>36</sup>.

The Council Directive 2005/85/EC of 1 December 2005 concerns “minimum standards for the procedures for granting and withdrawing refugee status in order to reduce the disparities between national examining procedures and to safeguard the quality of decision-making in European Union (EU) countries”<sup>37</sup>. Some articles are important to state, such as Article 3 in which there is present the scope of this Directive. In accordance with (1), “This Directive shall apply to all applications for asylum made in the territory, including at the border or in the transit zones of the Member States, and to the withdrawal of refugee status”<sup>38</sup>.

In this diploma, there is enshrined in Article 26, two situations, in (a) and (b), for a country to be considered as the first country of asylum for asylum seekers<sup>39</sup>. This Article is connected to Article 27 (1) of the present Directive<sup>40</sup>, as stated in the previous Article, which concerns the safe third country concept, especially the condition that Member States are subjected to, as they must apply for this concept only in case that they are certain that the asylum seeker in question will be treated in that country, accordingly to the principles stated in (1), (a) to (d)<sup>41</sup>. Article 27 (2)<sup>42</sup> claims that the application for this concept must contain the rules that are present in the country’s own legislation, which comprises (a) to (c). It is relevant to note that in accordance to point (c), the rules that may “(...) allowing an individual examination of whether the third country concerned is safe for a particular applicant (...)”<sup>43</sup>.

The present legislation has also established in Article 36 the possibility that Member States have in decline an asylum seeker’s application in case of the country’s authorities have confirmed that the applicant for protection “is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2”<sup>44</sup>., with the example of countries namely “Croatia, Albania, Russian Federation, Serbia, Turkey,

---

<sup>36</sup> *Ibidem*.

<sup>37</sup> (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status).

<sup>38</sup> *Ibidem*.

<sup>39</sup> *Ibidem*.

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Ibidem*.

<sup>42</sup> *Ibidem*.

<sup>43</sup> *Ibidem*.

<sup>44</sup> *Ibidem*.

Ukraine, beyond others, that adopted asylum laws but restricted implementation and can't provide access to an adequate procedure"<sup>45</sup>.

The Common European Asylum System, regarding the EU refugee law framework, by containing for instance the EU Directives already referred, is extending the scope of the international protection, by establishing in these instruments, provisions that contain minimum conditions that aim to ensure the international protection of refugees so as their rights.

The International and European Refugee Law legal framework with its several legal instruments, including the EU Directives and its provisions, had a considerable impact on the protection of asylum seekers and refugees, worldwide, as the present legislation was the result of a profound commitment of Member States in ensure and recognize that the rights and legal safeguards of this vulnerable group are enshrined in International and European legal instruments, that aim to consolidate them, so as to delimit their responsibilities towards the asylum seekers that are applying for international protection.

## **2. The New EU Pact on Migration and Asylum**

### **2.1. General Context**

In September 2020, after more than a decade of discussions, the European Commission presented a range of proposals, that constitute the New EU Pact on Migration and Asylum, including its five regulations, namely, the Asylum Procedures Regulation, the Screening Regulation, the Crisis, and Force Majeure Regulation, the EURODAC Regulation and the Asylum and Migration Management Regulation<sup>46</sup>.

The present EU's instrument "is a set of regulations and policies to create a fairer, efficient, and more sustainable migration and asylum process for the European Union. The Pact, (...) is designed to manage and normalise migration for the long term, providing certainty, clarity and decent conditions for people arriving in the EU. (...)"<sup>47</sup>. The goal of the Commission by presenting the Pact was the establishment of a new system of asylum that would address the creation of more efficient and uniform procedures for the examination of asylum seekers' applications and the granting of asylum<sup>48</sup>., as it also

---

<sup>45</sup> (EU Human Rights: Multiple Sources, 2015).

<sup>46</sup> (European Commission, Migration and Home Affairs, s.d.).

<sup>47</sup> (European Commission, Migration and Home Affairs, s.d.).

<sup>48</sup> As stated by Fabienne Keller, Member of the European Parliament, Renew Group, on European Policy Centre. *The New Pact on Migration and Asylum: What's Next?*. Retrieved from: <https://www.youtube.com/watch?v=LrgfGLEGZNU&t=238s>.

recognized the importance of taking a step forward a European common policy, in its internal and external dimensions.

Also, “The Pact on Migration and Asylum (...) is based on four main pillars: (1) a mandatory solidarity mechanism, (2) more comprehensive security procedures, (3) new criteria for the distribution of migrants and (4) increased cooperation with third countries”<sup>49</sup>. Regarding the last strand, it respects the external dimension of the EU Pact, which concerns the strengthening of the relationships between EU Member States and third countries, especially in the reception conditions of asylum seekers.

In December 2023, both the European Commission and Council reached a political agreement on the regulations of the New Pact, as it is a step towards its implementation which is scheduled for about two years, i.e., in early 2025, after its adoption. However, there have been discussions among not only the Commission and Council which concerns their different positions on several issues around migration, but also between EU Member States as they have distinct positions especially regarding their interests and will of sharing responsibilities, also, as “It is true that Member States, (...) do see a need for better governance of migration and refugee crisis but, nevertheless, their positions are different”<sup>50</sup>. On the one hand, States have the right and duty to protect their borders and to establish mechanisms capable to ensure it, and on the other hand, they may have the ability of providing asylum, to those in need<sup>51</sup>.

The New Pact on Migration and Asylum emerged during the Covid-19 pandemic, when the European countries were facing one more heavily than others, its effects, and consequences on many levels, such as social, political, and economic. Regarding refugees, several countries took measures such as borders closure and strict policies, diminishing the rights of asylum seekers and their families in being granted protection. Although there was a decrease regarding asylum applications, there was on the contrary, a significant increase of people crossing the European borders, which led to the recognition by the Commission of the urgency of reforming the asylum system<sup>52</sup>.

---

<sup>49</sup> (Kuzelewska & Piekutowska, The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum, 2021, p. 32).

<sup>50</sup> (Kuzelewska & Piekutowska, The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum, 2021, p. 33).

<sup>51</sup> As stated by Monique Pariat, Director-General DG Home, European Commission, in the European Policy Centre. The New Pact on Migration and Asylum: What's Next?. Retrieved from: <https://www.youtube.com/watch?v=LrgfGLEGZNU>.

<sup>52</sup> (Doliwa-Klepacka, 2021, p. 10).

In the creation of a new common asylum policy, “(...) a balance is to be achieved between the demand for responsibility and solidarity in the implementation of a comprehensive policy towards migrants”<sup>53</sup>. This is the current challenge to the implementation of this new system, proposed by the European Commission, in cooperation with the European Council and EU Member States.

In this regard, the EU Pact on Migration and Asylum, by establishing a new approach of a broader solidarity mechanism and responsibility-sharing among EU Member States, intended to be a more efficient response to the current issues the EU is facing, in respect to the mixed migration flows and the lack of security asylum seekers go through in an attempt to reach the European countries borders. Also, this new diploma aims to replace the Dublin III Regulation, as after the failure in the implementation of the current system, several issues were raised as a result of the absence of effectiveness and the weakness of the Dublin Regulation.

The EU Pact has provoked a controversial discussion in respect to the measures proposed by the European Commission and what will be done in the future in case it is adopted, as in accordance with many authors, it seems that EU Member States cannot reach a consensus regarding asylum matters<sup>54</sup>, as they have different positions and have their own interests. One of the main challenges to the implementation of the Pact will be “The need to find an adequate balance between the respect for the right to asylum guaranteed in article 18 of the European *Charta* on Fundamental Rights, (...) and the national interests of Member States (...)”<sup>55</sup>.

Nowadays, new complex challenges are evolving in the migration and asylum field. The main obstacle that the EU is confronting is attempting to, with the present proposal, overcome the “(...) stability of this policy core, as well as (...) the continuation of the regulatory path of integration in the field of asylum as opposed to institutional capacity building”<sup>56</sup>. Furthermore, the EU Institutions aim, with this Pact, to provide a common framework whose purpose is to simplify the procedures regarding asylum applications for international protection.

The EU Pact acknowledges these challenges when stating that a “new, durable European framework is needed, to manage the interdependence between Member States’

---

<sup>53</sup> *Ibidem.*, p.14.

<sup>54</sup> (Hein, 2022, p. 54).

<sup>55</sup> *Ibidem.*, p. 49.

<sup>56</sup> (Abdou, 2021, pp. 4-5).

policies and decisions and to offer a proper response to the opportunities and challenges in normal times, in situations of pressure and in crisis situations (...)”<sup>57</sup>. To concretize this necessity, it proposes a “comprehensive governance at EU level for better management and implementation of asylum and migration policies”<sup>58</sup>.

The New Pact focuses mostly on establishing “mutually beneficial partnerships with key third countries of transit and origin”<sup>59</sup>, as throughout this diploma, and more specifically in the Section 6, in which the European Commission highlights the need of cooperation between “Frontex border guards (...) with national border guards on the territory of a partner country”<sup>60</sup>. Furthermore, the Commission recognizes that “currently, one of the key gaps in European migration management is the difficulty to effectively return those who do not take up this action”<sup>61</sup>. For that purpose, the EU Pact sustains the need of “working closely with countries of origin and transit is a prerequisite for a well-functioning system of returns, readmission and reintegration”<sup>62</sup>. Concerning the partnerships, the development of legal pathways is one of the objectives proposed in the EU Pact<sup>63</sup>, it “should contribute to the reduction of irregular migration, which often leads to undeclared work and labour exploitation in the EU”<sup>64</sup>.

As stated earlier, the EU Pact has the goal of ensuring a fair sharing of responsibility and enhancing solidarity among European Member States. In respect to the latter, the European Commission proposed several measures that aim to establish a “mandatory”<sup>65</sup> and “flexible solidarity mechanism”<sup>66</sup>. This mechanism proposed in the new Pact has its roots on the divergent political positions Member States assumed regarding the relocation mechanism as with this tool, the present institution “(...) was thus expected to bring forth in the New Pact, a proposal that could be the object of a consensus to overcome the profound divisions created by the relocation decision of the Council of 22 September 2015”<sup>67</sup>.

---

<sup>57</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>58</sup> *Ibidem*.

<sup>59</sup> *Ibidem*.

<sup>60</sup> *Ibidem*.

<sup>61</sup> *Ibidem*.

<sup>62</sup> *Ibidem*.

<sup>63</sup> *Ibidem*.

<sup>64</sup> *Ibidem*.

<sup>65</sup> *Ibidem*.

<sup>66</sup> *Ibidem*.

<sup>67</sup> Council decision 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy. (2020). Official Journal of the European Union, L 248. Cited

In respect to the new solidarity mechanism, proposed by the Pact, first, it is essential to refer to the main issue that is now prevalent as its origins go back to 2016 with the reform of the Dublin Regulation, namely, solidarity towards asylum seekers and refugees. This issue has been discussed in the past years as the EU Commission found an opportunity with the present diploma to propose a new mechanism.

In the Pact, the European Commission proposed several options for Member States to choose regarding this issue, as they “can choose either to relocate asylum seekers, either to sponsor return or to provide other types of help or funding and even external cooperation for migration management in countries of origin or of transit of migrants”<sup>68</sup>. Relocations are a current solidarity contribution that has originated in the past years, discussions among Member States, as there has also been a lack of commitment by many of them in respect to its implementation in the practice and at the same time, these measures “(...) were one of the main stumbling blocks in finding a solution that would be acceptable to all Member States and EU institutions”<sup>69</sup>. The sponsorship return is a newly solidarity aid proposed in the Pact as it will be further discussed.

Finally, in respect to the steps to be followed in the future, the Commission reinforces the commitment by EU Member States on concretizing the Pact, reinforces the importance and necessity of partnerships with third countries with the support of the EU budget and the reference to the fact that “(...) a strong legal framework able to give the clarity and focus needed for mutual confidence, with robust and fair rules for those in need of international protection and those who do not have the right to stay”<sup>70</sup>.

The EU Pact is a non-binding legal instrument that “provides a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management, (...)”<sup>71</sup>., as well as to establish a common legal framework on migration and asylum, a step forward to the reduction of illegal migration and to promote cooperation with countries of origin and of transit<sup>72</sup>. There must also be a balance in the interests of both EU Member States and the right to asylum of asylum seekers or refugees.

---

in (Bruycker, *The New Pact on Migration and Asylum: What it is Not and What it Could Have Been*, 2022, p. 35).

<sup>68</sup> *Ibidem*.

<sup>69</sup> (Lang, 2022, p. 251).

<sup>70</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>71</sup> *Ibidem*.

<sup>72</sup> *Ibidem*.

The EU Pact contains five Regulations, as the one that specifically concerns the matter of solidarity, is the Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]<sup>73</sup>, that will be analyzed in the further chapter.

## **2.2. Analysis of the Asylum and Migration Management Regulation Proposal**

The Asylum and Migration Management Regulation is one of the five Regulations that are part of the EU Pact. The purpose of the present diploma is “(...) replacing the current Dublin Regulation and relaunches the reform of the Common European Asylum System (CEAS) through the establishment of a common framework that contributes to the comprehensive approach to migration management (...)”<sup>74</sup>.

Contrarily to the EU Proposal on Asylum and Migration Management Regulation, “Regulation (EU) No 604/2013 (Dublin Regulation) does not provide, in its current form, for tools to address situations where Member States are faced with migratory pressure.”<sup>75</sup>. Also, “Nor does it take into account the situation of migration management of mixed migratory flows and the consequent pressure these flows put on Member States’ migration system”<sup>76</sup>. Thus, the EU Proposal on Asylum and Migration Management Regulation focuses on search and rescue operations and the securitization of the migration, and the fact that “(...) a solidarity mechanism that is applied (...) in cases of persons disembarked following search and rescue operations”<sup>77</sup>.

One of the main objectives of the Asylum and Migration Management Regulation is to, in accordance with Article 1, “(a) sets out a common framework for the management of asylum and migration in the Union;”<sup>78</sup>, present in Article 3 of the current legislation. In accordance with the latter, both the EU and Member States may act along each other in a comprehensive approach of migration management, as that consist in, namely, partnerships and cooperation with third countries “including on legal pathways for third-country nationals in need of international protection and for those otherwise admitted to

---

<sup>73</sup> (Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund], COM (2020) 0279, 2020).

<sup>74</sup> *Ibidem*.

<sup>75</sup> *Ibidem*.

<sup>76</sup> *Ibidem*.

<sup>77</sup> *Ibidem*.

<sup>78</sup> *Ibidem*.

reside legally in the Member States (...)”<sup>79</sup>., between the EU institutions, Member States and organizations; also the prevention of irregular migration movements and the protection of EU’s borders, beyond others.

Also, part of the objective established in the EU Pact concerning the comprehensive approach on migration is to enhance the assistance by Member States on search and rescue operations of refugees that are obliged to go through dangerous routes, along with the “increased operational and technical support”<sup>80</sup> of Frontex, as in accordance with the European Commission in the EU Pact, “Assisting those in distress at sea is a moral duty and an obligation under international law”<sup>81</sup>.

Equally to the Dublin III Regulation, the present instrument contains in its provisions, the scope of family reunification but introduces unaccompanied minors<sup>82</sup> as “the proposal clarifies that the Member State where the minor first lodged his or her application for international protection will be responsible, unless it is demonstrated that this is not in the best interests of the minor”<sup>83</sup>.

This is an important provision as in reality there are millions of minors crossing the borders without their family or even being accompanied at all, as it also involves the cooperation among Member States, as in accordance to the Regulation, “(...) the transferring Member State shall make sure that that Member State will take the necessary measures under the Asylum Procedure Regulation and the Reception Conditions Directive (...)”<sup>84</sup>. Also, Article 2 (g) (v) of the Asylum and Migration Management Regulation Proposal, introduces siblings of the applicant for international protection, considered as part of family.

Regarding the issue of solidarity, according to the European Parliament and Council, this Regulation proposes an innovative and system concerning solidarity as it encompasses simplified procedures “(...) for determining the Member State responsible for examining an application for international protection”<sup>85</sup>. The criterion in question is

---

<sup>79</sup> *Ibidem*.

<sup>80</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>81</sup> *Ibidem*.

<sup>82</sup> Enshrined in Article 15 of the Asylum and Migration Management Regulation Proposal.

<sup>83</sup> (Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]’, COM (2020) 0279, 2020).

<sup>84</sup> *Ibidem*.

<sup>85</sup> *Ibidem*.

enshrined in Articles 14 to 23 of the Regulation as the principles and safeguards that are inherent to it are present in Articles 8 to 13 of the diploma.<sup>86</sup>

Concerning the solidarity mechanism and respective conditions, the Part IV of the Asylum and Migration Management Regulation, as the purpose of the EU Pact is to be an alternative to the country of first entry rule enshrined in the Dublin III Regulation, by proposing a new solidarity mechanism, and to be a response to the failure of the Dublin system, however, the mechanism in question does not seem to address the absence of amendment of the rule in question. The new solidarity mechanism is crucial as it would address the question of the unequal distribution of responsibilities and the lack of cooperation among Member States. Yet, the Pact is not clear on how to solve this issue in practice.

Articles 45 to 61, addresses the various forms of contributions in respect to solidarity by Member States, as in Article 45 (1)<sup>87</sup> of the diploma are enshrined the main solidarity contributions that States may choose, namely, relocation of applicants, return sponsorship of third-country nationals that are staying illegally in the country in question, relocation of refugees and “(...) capacity-building measures, (...) operational support and measures aimed at responding to migratory trends affecting the benefitting Member State (...)”<sup>88</sup>. These measures aim to facilitate and enhance the effectiveness of the application procedures.

The return sponsorship is a new solidarity measure that requires a cooperation between the sponsoring Member State and the benefitting one with the aim to establish the support measures that are “(...) necessary for carrying out the return of individually identified illegally staying third-country nationals from the territory of the benefitting Member State”<sup>89</sup>. These measures may be implemented in eight months, as in the case there is a situation of migratory pressure, “(...) the Commission adopts an implementing act on solidarity (...)”<sup>90</sup>. However, in January 2023 a draft by the European Council on the Asylum and Migration Management Regulation withdrawn return sponsorship.<sup>91</sup> Also, it proposed several changes as it can be seen regarding mostly the solidarity mechanism.

---

<sup>86</sup> *Ibidem.*

<sup>87</sup> *Ibidem.*

<sup>88</sup> *Ibidem.*

<sup>89</sup> *Ibidem.*

<sup>90</sup> *Ibidem.*

<sup>91</sup> (Tracking the Pact: Unaccountable new decision-making bodies and "adaptable responsibility", 2023).

Another form of solidarity contribution is the voluntary solidarity as “Any Member State may make voluntary contributions for the benefit of that Member State, including by means of relocation of applicants for international protection (...)”<sup>92</sup>, or they can contribute with the purpose of “strengthening the capacity of Member States in the field of asylum, reception and return and in the external dimension”<sup>93</sup>. They may also notify the Commission through the sending of a Solidarity Support Plan if planning to contribute. This type of solidarity mechanism is applicable when EU Member States are under migratory pressure, as its purpose is for other Member States to assist them, having the possibility to choose how they want to contribute: through relocations or through financial or operational support, for instance.

In the implementation of these solidarity contributions, the European Commission has a proactive role as it will monitor Member States migratory situation and assist them as “will identify the overall needs of the Member State that receives an unexpected influx of migrants and set out in a report the measures needed to address the situation, after close consultation with the Member State concerned”<sup>94</sup>.

The Commission has also a role of supervising solidarity measures in the context of disembarkations following search and rescue operations and in the implementation of acts for these operations, present in Articles 47 and 48 of the Asylum and Migration Management Proposal respectively.<sup>95</sup> Furthermore, the Commission adopts acts concerning solidarity in situations of migratory pressure, as present in Article 53 of the diploma.<sup>96</sup>

The EU Pact on Migration and Asylum also introduces a mechanism called Voluntary Return and Reintegration Strategy as it “(...) sets out measures to improve voluntary return mechanisms, from outreach activities to increase migrants’ awareness of the return and reintegration assistance available, to better counselling on their legal options. (...)”<sup>97</sup>. The Pact intended to emphasize the need to establish a mechanism that would contribute to a more humane and comprehensive approach on the return of

---

<sup>92</sup> *Ibidem*.

<sup>93</sup> *Ibidem*.

<sup>94</sup> (Vara, Flexible Solidarity in the New Pact on Migration and Asylum: A New Form of Differentiated Integration?, 2022, p. 1254).

<sup>95</sup> (Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]’, COM (2020) 0279, 2020).

<sup>96</sup> *Ibidem*.

<sup>97</sup> (Moraru, 2022).

migrants, enhancing the simplification of reintegration of returnees through “setting out new approaches in third countries (...)”<sup>98</sup>.

However, in my perspective, the European Commission has not developed this strategy, especially concerning its implementation. It only refers to the fact that one of the main components of this mechanism will be the cooperation with third countries and Frontex<sup>99</sup>. It is not much said on how this will work in practice.

Furthermore, the Asylum and Migration Management Regulation Proposal does not add any amendment nor changes the Dublin Regulation criterion of the first country of entry, proposing a new solidarity mechanism. The fact that no innovation is present in this Regulation, maintaining the same criterion, means that it does not answer the issue of the ineffectiveness of the European asylum system. Thus, at the same time it does not truly get to the core of the issue. Therefore, this Regulation Proposal does not fulfill the expectations of refugees towards their freedom of asylum choice.

The Migration Pact is being discussed for its proposals, especially concerning the new solidarity mechanism it aims to implement. However, it has been criticized by several academics since the innovations presented in the Pact are fewer than the measures already existing, such as for instance the case of relocations. On the following chapter, it will be addressed the debate around whether the New Pact is a solution for the current European refugee crisis or an attempt for the achievement of the goal of international protection.

### **2.3. The EU Proposal for a New Common Policy: The Solution or a Failed Attempt for International Protection?**

Since the Commission’s Proposal of the New EU Pact, high expectations around the diploma started to appear, although many criticisms were made by academics in general as it has been mainly stated that it is not the solution for the European crisis as it does not seem to address the main obstacles the EU has been facing in the past decades, namely, the issue of solidarity and the responsibility-sharing, the increasing number of irregular migratory movements and the root causes of it.

In the present chapter, I will first address the features of the EU Pact and the criticisms that are made to it. Furthermore, I will approach the objectives of the Asylum and Migration Management Regulation, as well as the critiques that are also made to the

---

<sup>98</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>99</sup> *Ibidem*.

present Regulation. In the end of the chapter, I will conclude by answering the question that is now on debate that is, “Is the EU Proposal for a New Common Policy the Solution or a Failed Attempt for International Protection?”

When the European Commission proposed the New Pact on Migration and Asylum in 2020, it was stated that, concerning the purpose of “(...) build a system that manages and normalizes migration for the long term and which is fully grounded in European values and international law”<sup>100</sup>, by EU Member States, “The New Pact on Migration and Asylum offers a fresh start to address this task”<sup>101</sup>.

In the introduction of the EU Pact, the EU Commission recognizes the issues that Member States faced with the refugee crisis and refers the requirement of establishing a European framework “(...) to offer a proper response to the opportunities and challenges in normal times, in situations of pressure and in crisis situations (...)”<sup>102</sup>. The EU Commission also highlights the need for the EU to closely cooperate with third countries and fighting against migrant smuggling<sup>103</sup>, and the fact that “The interdependency of Member States also makes it indispensable to ensure full, transparent and consistent implementation on the ground”<sup>104</sup>.

With the EU Pact, the European Commission proposed a “fresh start”<sup>105</sup>, as stated before, especially concerning the new solidarity mechanism and fair sharing of responsibilities among Member States. In fact, the Pact refers to several aspects that are currently a concern of the EU, as one of them is the solidarity issue. In the diploma, we see that the EU Commission, in the measures or objectives proposed, exhaustively refers to the need for a new mechanism of solidarity and for that it proposes “a pool of projected solidarity measures”<sup>106</sup>.

In respect to this common framework that the Pact aims to establish, the present diploma highlights the importance of protecting the most vulnerable persons by establishing measures such as, not only relocation but also “(...) vulnerability assessments during the pre-entry screening process and exemptions of some groups from

---

<sup>100</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>101</sup> *Ibidem*.

<sup>102</sup> *Ibidem*.

<sup>103</sup> *Ibidem*.

<sup>104</sup> *Ibidem*.

<sup>105</sup> *Ibidem*.

<sup>106</sup> (Gazi, 2021, p. 167).

border procedures”<sup>107</sup>. In fact, in Section 2.4., the EU Commission refers that it is its intention to, by reforming the EU system, and considering the risks that women and children face every day considering human trafficking, it aims to reinforce the rights of children, especially unaccompanied minors.<sup>108</sup> For that purpose, the EU Commission intends to provide “(...) adequate accommodation and assistance, including legal assistance, throughout the status determination procedures”<sup>109</sup>.

Furthermore, the EU Commission refers to the role of Frontex, regarding the purpose of the Commission to enhance its support to EU Member States, concerning return systems, through operational support<sup>110</sup> as “Embedding return in national strategies under the common framework should result in better planning, resourcing and infrastructure for return and readmission operations”<sup>111</sup>., as for the system to be effective, it will require an active participation and partnership by the EU and its Member States. This purpose of enhancing cooperation is also applicable to the objective by the Commission of combatting migrant smuggling, as “The new EU Action Plan (...) will include support for countries of origin and transit in capacity-building both in terms of law enforcement frameworks and operational capacity, (...)”<sup>112</sup>. Frontex should adopt a position of more proximity with EU Member States, as it should be present in more rescue operations as each time more, there is an increasing level of migrants, searching for asylum by sea.

Finally, another key feature present in the EU Pact that is relevant to describe is the objective of this instrument to strengthen the partnerships between the EU Member States with third countries of origin and transit, so as with EU agencies<sup>113</sup> as “The Commission and the High Representative will immediately start work, together with Member States, to put this approach into practice through dialogue and cooperation with our partners”<sup>114</sup>. This refers to the external dimension of the Pact that is currently highly discussed and is one of the objectives more emphasized by the EU Commission, throughout the Pact.

---

<sup>107</sup> (Gazi, 2021, p. 168).

<sup>108</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>109</sup> *Ibidem*.

<sup>110</sup> *Ibidem*.

<sup>111</sup> *Ibidem*.

<sup>112</sup> *Ibidem*.

<sup>113</sup> *Ibidem*.

<sup>114</sup> *Ibidem*.

However, there have been numerous critiques by academics to the EU Pact, regarding its key features, that are relevant to address in order to assess whether the Pact is a step towards a new beginning to the European reform or not. The criticisms that will be discussed ahead in the present section, focus on, essentially, the solidarity measures, the external dimension of the diploma, the instrumentalization of European refugee strategies as well as the institutionalization of the measures proposed by the EU Commission, to achieve the desired goal of reforming the European system by establishing a new, comprehensive framework.

The EU Pact is being criticized by the instrumentalization of the reception conditions, as in accordance with Amnesty International, “rather than investing in dignified reception within the EU and expanding safe and regular pathways to allow people to reach protection in Europe, (...) this amounts to a further step towards externalizing border control (...)”<sup>115</sup>. EU Member States have shown an unwillingness to provide refugees adequate treatment when they reach the borders, as it seems that “The document does not guarantee the improvement of conditions and standards in places of reception for asylum seekers”<sup>116</sup>.

In fact, instead of establishing in their migration policies measures in order to establish better conditions for refugees, EU Member States decide to “(...) intensify the external dimension of migration policies (...)”<sup>117</sup>. The external dimension of the EU Pact concerns for instance the reinforcement of measures namely the closure of borders by States, as a way to prevent the entrance of asylum seekers to EU countries’ borders. The use and intensification of this type of measure seems contradictory with the purpose of the Commission in establishing a more inclusive common framework, respecting fundamental rights of refugees.

Another criticism made to the EU Pact concerns the “mutually beneficial partnerships with key third countries of origin and transit;”<sup>118</sup>, which the Pact emphasizes as in accordance with the EU Commission, it contributes to the “well-functioning system of returns, readmission and reintegration”<sup>119</sup>. The EU has in fact been assisting other

---

<sup>115</sup> (EU: Migration Pact agreement will lead to a "surge in suffering", 2023).

<sup>116</sup> (Kuzelewska & Piekutowska, The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum, 2021, p. 33).

<sup>117</sup> (Vara, Flexible Solidarity in the New Pact on Migration and Asylum: A New Form of Differentiated Integration?, 2022, p. 1262).

<sup>118</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>119</sup> *Ibidem*.

Member States, as exemplified by the Agreement with Tunisia<sup>120</sup>, for instance. However, several academics criticized by stating that “If the EU wants to develop authentic partnerships to ensure the cooperation of third states, it must stop pretending that the fight against irregular migration is the starting point as a shared concern”<sup>121</sup>. One of the main priorities of the EU Commission with the EU Pact is the fighting against migrants smuggling as enshrined in the diploma.<sup>122</sup>

This concern with the reinforcement of the securitization suggests that “the Commission legitimizes the externalization of EU borders through a humanitarian discourse arguing that the increased restrictions and shifting of responsibilities to third countries are necessary to protect migrants from human smugglers”<sup>123</sup>. It appears, in fact, that the security of migrants is a priority of the Commission, although it seems contradictory with the measure of reinforcement of borders security that is also a measure proposed by the present institution.

The Commission also presents in the EU Pact the objective of developing legal and safe pathways for migrants as in accordance with it, it “(...) should contribute to the reduction of irregular migration (...)”<sup>124</sup>, although the diploma does not foresee the ways in which it would be concretized in practice, as it is said that “The Pact is not however very specific on the actions through which the Union will accomplish these objectives, apart from proving funding as well as reinforcing support and mobilizing national efforts both on resettlement and legal migration schemes”<sup>125</sup>. The same is said about cooperation, as “(...) detailed attention has not however been paid to clarify the set of instruments the EU and its Member States have at their disposal to implement this external dimension”<sup>126</sup>.

Finally, concerning the goal by the Commission on establishing a “new solidarity mechanism for situations of search and rescue, pressure and crisis”<sup>127</sup> in the EU Pact, it is also been said by several academics that the New Pact does not address the issue

---

<sup>120</sup> (The European Union and Tunisia come to an agreement on a EUR 150 million programme , 2023).

<sup>121</sup> (Bruycker, *The New Pact on Migration and Asylum: What it is Not and What it Could Have Been*, 2022, p. 40).

<sup>122</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>123</sup> (Nissander, 2021, p. 1).

<sup>124</sup> *Ibidem*.

<sup>125</sup> (Andrade, 2022, p. 229), referring to “section 6.6.” [of the EU Pact on Migration and Asylum].

<sup>126</sup> *Ibidem.*, p. 230.

<sup>127</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

solidarity in the sense that the measures proposed are viewed as a choice by EU Member States and “Yet, the solidarity is not systematised in the pact as a core of the agreement. (...)”<sup>128</sup>.

The solidarity and fair sharing are an issue that led to the EU to establish the New Pact as the response for the lack of will by EU Member States in investing in its migration policies, the absence of a proper European migration system and effective measures, that had negative repercussions in all the European Union. The EU Commission referred in the Pact that the Asylum and Migration Management Regulation Proposal is a new framework “(...) which ensures a fair sharing of responsibility and addresses effectively mixed arrivals of persons in need of international protection and those who are not”<sup>129</sup>.

The Asylum and Migration Management Proposal has been criticized mainly by the solidarity mechanism that is proposed. As referred in the previous section, this mechanism allows Member States flexibility in choosing solidarity measures that they can use in order to assist other Member States, that are under migratory pressure<sup>130</sup>. It seems that “It is foreseen as a choice open to Member States between two opposite options – relocation and return sponsorship. (...)”<sup>131</sup>. Also, regarding the solidarity measures, “(...) the most recent experiences of relocations adopted in the EU show a lack of willingness to contribute to relocations”<sup>132</sup>. This was one of the reasons that contributed to the failure of the Dublin system and the discussion around its reform.

Concerning the fair sharing of responsibility, which is one of the current concerns, the EU Commission stated that “Through the principles of integrated policy-making and those relating to solidarity and fair sharing of responsibility, Member States have a shared interest to ensure the coherent implementation of migration management at EU level.”<sup>133</sup> In order to achieve an efficient system regarding migration, the EU Commission refers to the need of enhancing cooperation with third countries and between Member States and

---

<sup>128</sup> (Kuzelewska & Piekutowska, *The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum*, 2021, p. 34).

<sup>129</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>130</sup> *Ibidem*.

<sup>131</sup> (Kuzelewska & Piekutowska, *The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum*, 2021, p. 34).

<sup>132</sup> (Vara, *Flexible Solidarity in the New Pact on Migration and Asylum: A New Form of Differentiated Integration?*, 2022, p. 1256).

<sup>133</sup> (Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]', COM (2020) 0279, 2020).

EU agencies. However, academics such as Francesco Maiani stated that “(...) operational cooperation has proven useful but cannot tackle all the relevant aspects of the unequal distribution of responsibilities among Member States; (...)”<sup>134</sup>.

The proposed solidarity contributions so as “(...) a new and more comprehensive mechanism for solidarity to ensure the normal functioning of the migration system, (...)”<sup>135</sup>, do not seem to be realistic and achievable, as in the reality it depends much on the interests of the EU Member States as well as their compromise on, first, to restructure their national systems and then, assuming to reform the common European migration system, as “Without substantial corrections, without true and workable innovations, the “new” Pact will be a reform only in the name. It will leave the CEAS and its inhabitants in their current straits and fail to solve even just one of its structural flaws, while degrading legal protection in many aspects”<sup>136</sup>.

From my perspective, the EU Pact on Migration and Asylum, so as the Asylum and Migration Management Regulation Proposal, are the result of a thoughtful, considered proposal and an effort by the Commission to come up with a solution in light of the current European crisis, as they are in line with the international protection for several reasons such as, the enhancing the protection of refugees’ rights and an alternative for the Dublin Regulation, by introducing new solidarity mechanism is mandatory and flexible, giving the possibility for Member States to choose among the solidarity contributions, the one they want to recur in order to support others Member States that are under migratory pressure or in situations of search and rescue operations.<sup>137</sup> Besides, it gives special attention to the necessity of establishing legal pathways in order to reduce migration, which is one of the priorities of the European Union’s system, and the enhancing of the cooperation not only among EU Member States but also between them with third countries of origin and transit.<sup>138</sup>

In addition, the fact that the new solidarity mechanism aims to assist countries that are subjected to migratory pressure, is, under my point of view, a measure by the EU Commission that was much needed as, considering the background of the refugee crisis

---

<sup>134</sup> (Maiani, *Into the Loop: The Doomed Reform of Dublin and Solidarity in the New Pact*, 2022, p. 51).

<sup>135</sup> (Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]’, COM (2020) 0279, 2020).

<sup>136</sup> (Maiani, *Into the Loop: The Doomed Reform of Dublin and Solidarity in the New Pact*, 2022, p. 60).

<sup>137</sup> (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020).

<sup>138</sup> *Ibidem*.

in 2015/16, frontline countries were overburdened due to the influx of refugees, as this new mechanism considers this, as at first sight, there must be given priority to support the countries that are more affected to the entrance of refugees in their countries.

The EU Pact is the proposed solution for the replacement of the Dublin Regulation and consequently, the reform of the European asylum system, which is a complex process that not only depends on the European institutions but also on Member States themselves. Considering the current challenges that the EU is facing in migration matter, the EU institutions recognize that there is a sense of urgency that is also implicit in the Pact when it highlights that it will address the root causes of migration.<sup>139</sup>

However, in view of the criticisms that have been made to the EU Pact and the Asylum and Migration Management Regulation that must be taken into account, a suggestion to achieving the goal of international protection would be for instance, to focus “(...) in the indispensable task of securing the full implementation of EU standards and rules as they stand, in line with the values and principles enshrined in the Treaty and the Charter”<sup>140</sup>.

Under my point of view, the EU Pact is not sufficient to respond to the challenges regarding the refugee crisis that has been ongoing in Europe for several years, as it does not address what should really be a priority to the European Union, concerning the purpose of establishing the diploma in question. The Pact is not the solution or is not effective mitigate the consequences that result of mainly, wars in countries, such as the recent case of the Ukrainian war, that often leads to secondary movements by asylum seekers and refugees.

As each time more new and complex issues seem to be increasing, the EU Pact is not effective enough to respond to the refugee concerns and needs. Thus, the question of solidarity will remain for many more years if the Member States do not cooperate with each other and do not really address the gaps behind the refugee system that did not disappear with the proposed solution by the Commission.

One of the intentions by the Commission in presenting the Pact was to establish clear and simplified asylum procedures as well as “(...) much faster and uniform procedures for the examination, granting of asylum appeal”<sup>141</sup>., and a fairer distribution

---

<sup>139</sup> *Ibidem*.

<sup>140</sup> (Maiani, Into the Loop: The Doomed Reform of Dublin and Solidarity in the New Pact, 2022, p. 60).

<sup>141</sup> As said by Fabienne Keller, in “The New Pact on Migration and Asylum: What’s Next?”, September 2023, European Policy Centre., in <https://www.youtube.com/watch?v=LrgfGLEGZNU>.

of the responsibility among EU Member States. However, the Pact is not explicit on the ways in which these procedures will proceed and be more effective. It also does not address the concrete implementation of the cooperation not only among Member States but also with third countries.

In the following subchapter, considering what has been discussed on the EU Pact and the conclusion on whether it is the solution or a failed attempt for the international protection in the European Union, it will be addressed the prospects on migration for the European Union, considering the contemporary issues of the refugee regime.

## **2.4. Future Prospects on Migration for the EU**

As stated in the previous chapter, there are currently several issues that asylum seekers and refugees are facing in Europe, at many levels, namely political, economic, and social, such as irregular migratory movements due to conflicts ongoing in asylum seekers' countries, restrictive measures taken by European countries that are part of their policies, that aim to prevent the entrance of asylum seekers in the countries in question.

The future of migration in the EU is, given the current context, uncertain, although several academics or actors have been making predictions, based on several factors such as for instance, demography. The fact that the main issue on migration is the growing number of refugee flows in European countries, due to the lack of a common European asylum system effective enough to diminish these situations, it is a fact that “(...) migration governance itself functions (often) as a fundamental, yet uncertain driver of large-scale migration movements”<sup>142</sup>.

Regarding the future of migration, there are assumptions that the governments must consider, “such as global and local economic development, political or social crises in various countries of origin, slowly but steadily progressing demographic or climatic developments, or sudden-onset developments and stocks that are difficult to forecast”<sup>143</sup>., however it is important to recognize that are certain factors that are difficult to predict, such as the future ongoing conflicts, as well “(...) as conflicts and environmental disasters, may come as sudden ‘shocks’ that are hard to anticipate”<sup>144</sup>.

The tendency is that governments of EU Member States tend to restrict migration by establishing policies or measures that are against the idea of asylum seekers to look

---

<sup>142</sup> (Czaika, Bohnet, Zardo, & Bijak, 2022, p. 4).

<sup>143</sup> (Czaika, Bohnet, Zardo, & Bijak, 2022, p. 13).

<sup>144</sup> (de Valk, et al., 2022, p. 464).

for asylum, as it is demonstrated by the closure of the countries' borders, as well as "(...) by changing laws and regulations towards more restrictive arrangements"<sup>145</sup>.

The national asylum systems of European States need to be reformed into better systems, so as to effectively respond to unpredictable situations that may appear, "(...) for example, in the case of humanitarian emergencies – pose institutional challenges regarding reception capacities, health systems, housing, education, and training programs amongst others"<sup>146</sup>. If States proceed to take smaller steps to concretize the reform that their system's needs, at long term, it will be easier to deal with the consequences resulted from any unforeseen events that arise at any time.

With the hope to improve the status of future migration flows, there are several methods developed by many academics "(...) aim to describe potential volumes of people moving, but increasingly also include characteristics of those on the move"<sup>147</sup>. These methods are part of what is called "migration forecasting"<sup>148</sup>, that constitutes "(...) an important tool to estimate future migration flows"<sup>149</sup>.

An aspect to consider concerning migration is the fact that, as thousands of refugees arrive to European countries, from countries where the cultures are distinct from Europe, so as the language, their setting up in EU countries would involve changes or adaptation in respect to European values. On the contrary, host countries will also have to reflect on being more comprehensive in the integration of refugees, although this process is not easy as "Migration poses questions of social and cultural (not only economic) integration, raises tensions about dominant values or prevailing traditions, stresses the limits of the institutional make up of receiving countries with the quest of accommodating new populations with different cultures and needs"<sup>150</sup>.

In conclusion, the future of migration to the EU is a process that involves cooperation among EU Member States, through for instance the establishment of partnerships between countries of origin and receiving countries. This will also involve the will of governments to invest in their asylum systems, and the change of a paradigm in respect to the perception that unfortunately many States have regarding refugees: seeing them as a burden and not as contributors to societies, in a positive way.

---

<sup>145</sup> *Ibidem.*, p. 16.

<sup>146</sup> (de Valk, et al., 2022, p. 463).

<sup>147</sup> *Ibidem.*, p. 464.

<sup>148</sup> A term much used by academics.

<sup>149</sup> *Ibidem.*

<sup>150</sup> (Pozzo, Boubtane, D'Albis, Tonegutti, & Paravati, 2022, p. 491).

Furthermore, the evolution of technology as we know, especially the IA, can be used for, namely, “(...) designing and implementing better integration strategies, countries must also be well-equipped to take advantage of what digital innovation can offer”<sup>151</sup>.

---

<sup>151</sup> (Villa, 2020).

## **Conclusion**

The European Refugee law framework has been evolving in the last decades. The EU legislation that was adopted and is still in place nowadays contributed to the protection of the asylum seekers and refugee's rights. The CEAS revealed to be a major contribution to this purpose, and a significant step towards a better future, in which refugees would feel included.

However, with the 2015 refugee crisis, this system became ineffective and incapable of responding to the mass asylum applications, that suddenly led to the failure of the European countries asylum systems and consequently to secondary migratory movements in Europe.

The EU Pact on Migration and Asylum was proposed with the aim to enhance solidarity among Member States and European Institutions, such as the European Commission for instance, so as, to answer the question of the absence of a fair and equal distribution of responsibilities, among EU States, that existed until them. One of the major innovations of the Pact was the proposal of a new solidarity mechanism.

Nevertheless, has been criticized, for the fact that the present diploma does not really address the issue of solidarity and fair sharing of responsibilities among Member States, not clarifying it, neither establishing a concrete solution and the means that would lead to it, especially regarding the implementation of the solidarity mechanism for instance, proposed.

It is important to recognize the impact that the EU Pact has in Europe, as it is a joint effort, criticized or not, by the European Institutions, namely the Commission and the European Parliament in addressing in this diploma their main priorities regarding refugees, namely, fighting against migrant smuggling.

The Pact also reiterates the need for a stronger and closer cooperation among EU Member States, as it mostly depends on their will and reaching a consensus on the matter of migration. It is inevitable that the issues that migrants face nowadays will remain in the future if there is not any unanimity in the positions of EU Member States on important questions regarding asylum.

In conclusion, there is much to be done after the adoption of the Pact and its Regulations, especially what concerns to its implementation, as there are many aspects to be taken into consideration, such as for instance the referred measures for the management of migration in Europe, as proposed by several academics, so as the

criticisms made to the Pact must be considered as several of them demonstrate that the future on migration for the EU must be a priority for the EU Member States to consider on its policies having into account the fact that the matter of migration and asylum is an issue that involves a deep understanding on its roots by all European States and engaging conversations on the issues that may be discussed.

## Bibliography

Abdou, L. H. (2021, February). From the Migration Crisis to the New Pact on Migration and Asylum - The Status Quo Problem. *BRIDGE Network, Working Paper*, 1-13. Retrieved from <https://cadmus.eui.eu/bitstream/handle/1814/73657/SSRN-id3786906.pdf> .

Andrade, P. G. (2022). EU Cooperation with Third Countries within the New Pact on Migration and Asylum: New Instruments for a 'Change of Paradigm'? In D. Thym, & D. Thym (Ed.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (Vol. 38, pp. 223-238).

Bruycker, P. D. (2022). The New Pact on Migration and Asylum: What it is Not and What it Could Have Been. In O. A. Network, & D. Thym (Ed.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (Vol. 38, pp. 33-42). Nomos Verlagsgesellschaft Mbh & Co.

C.K., and others v Republika Slovenija, Judgment, C-578/16 (CJEU, Fifth Chamber February 16, 2017). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CJ0578> .

*Charter of Fundamental Rights of the European Union*. (2000). Retrieved from European Parliament: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf) .

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*. (2020, September 23). Retrieved from EUR-Lex: [https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF) .

*Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration*. (2016, June 7). Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0385> .

*Consolidated Version of the Treaty on the Functioning of the European Union*. (2009). Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT> .

*Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*. (n.d.). Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32005L0085> .

*Country responsible for asylum application (Dublin Regulation)*. (n.d.). Retrieved from European Commission - Migration and Home Affairs: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en) .

Czaika, M., Bohnet, H., Zardo, F., & Bijak, J. (2022). European migration governance in the context of uncertainty. *QuantMig* , pp. 1-29. Retrieved from QuantMig Deliverable 1.5.: <https://www.quantmig.eu/res/files/QuantMig%20D1.5%20Uncertain%20Migration%20Governance%20V1.2%2022February2023.pdf> .

de Valk, H. A., Acostamadiedo, E., Qing, G., Melde, S., Mooyaart, J., Sohst, R. R., & Tjaden, J. (2022). How to Predict Future Migration: Different Methods Explained and Compared. In P. Scholten, *Introduction to Migration Studies: An Interactive Guide to the Literatures on Migration and Diversity* (pp. 463-482). Springer.

*Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011* . (n.d.). Retrieved from EUR-Lex: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF> .

*Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*. (n.d.). Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032> .

Doliwa-Klepacka, A. (2021). The New Pact on Migration and Asylum as a Response to the Current Migration Challenges - Selected Issues. *Bialostockie Studia Prawnicze*, 26(1), 9-21. Retrieved from <https://sciendo.com/article/10.15290/bsp.2021.26.01.01> .

EU Human Rights: Multiple Sources. (2015). In C. Costello, *The Human Rights of Migrants and Refugees in European Law*. Oxford University Press.

*EU: Migration Pact agreement will lead to a "surge in suffering".* (2023, December 20). Retrieved from Amnesty International: <https://www.amnesty.org/en/latest/news/2023/12/eu-migration-pact-agreement-will-lead-to-a-surge-in-suffering/> .

*European Agenda on Migration.* (n.d.). Retrieved January 15, 2024, from European Commission, Migration and Home Affairs: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/european-agenda-migration\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/european-agenda-migration_en) .

European Commission, Migration and Home Affairs. (n.d.). *What is the New Pact on Migration and Asylum of the EU?* Retrieved February 5, 2024, from European Commission, Migration and Home Affairs: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and-asylum\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and-asylum_en) .

*European Convention on Human Rights.* (1950). Retrieved from ECHR - European Court of Human Rights: [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG) .

Frelick, B., Kysel, I. M., & Podkul, J. (2016, December). *The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants.* Retrieved from Human Rights Watch: <https://www.hrw.org/news/2016/12/06/impact-externalization-migration-controls-rights-asylum-seekers-and-other-migrants> .

Garlick, M. (2016). The Dublin System, Solidarity and Individual Rights. In V. Chetail, P. De Bruycker, & F. Maiani (Eds.), *Reforming the Common European Asylum System: The New European Refugee Law* (pp. 159-164).

Gazi, T. (2021, May). The New Pact on Migration and Asylum: Supporting or Constraining Rights of Vulnerable Groups? *European Papers*, 6, 167-175. Retrieved from [https://www.europeanpapers.eu/en/system/files/pdf\\_version/EP\\_EF\\_2021\\_I\\_017\\_Theodora\\_Gazi\\_00460.pdf](https://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2021_I_017_Theodora_Gazi_00460.pdf) .

Hein, C. (2022). Monitoring the Debate on the New Pact on Migration and Asylum. *Optime Albanian University*, 26(1), 41-57. Retrieved from <https://albanica.al/optime/article/view/371> .

*Historically bad: New EU pact on migration and asylum normalises rights violations and endangers children.* (2023, December 20). Retrieved from Reliefweb:

<https://reliefweb.int/report/world/historically-bad-new-eu-pact-migration-and-asylum-normalises-rights-violations-and-endangers-children> .

Kuzelewska, E., & Piekutowska, A. (2021). The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum. *Bialostockie Studia Prawnicze*, 26(1), 23-36. Retrieved from [https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/10676/1/BSP\\_26\\_1\\_E\\_Kuzelewska\\_A\\_Piekutowska\\_The\\_EU\\_Member\\_States'\\_Diverging\\_Experiences\\_and\\_Policies.pdf](https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/10676/1/BSP_26_1_E_Kuzelewska_A_Piekutowska_The_EU_Member_States'_Diverging_Experiences_and_Policies.pdf) .

Lang, I. G. (2022). Financial Aspects of the EU's New Pact on Migration and Asylum: Towards Stronger EU-Funded Policy Implementation? In O. A. Network, & D. Thym (Ed.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (Vol. 38, pp. 239-255). Nomos Verlagsgesellschaft Mbh & Co.

Long, K. (2021). Onward Migration. In C. Costello, M. Foster, & J. McAdam, *The Oxford Handbook of International Refugee Law*.

M.S.S. v. Belgium and Greece, Judgment, 30696/09 (European Court of Human Rights, The Grand Chamber January 21, 2011). Retrieved from [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-103050%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-103050%22]}) .

Maiani, F. (2016). The Dublin III Regulation: A New Legal Framework for a More Humane System? In V. Chetail, P. De Bruycker, & F. Maiani (Eds.), *Reforming the Common European Asylum System: A New European Refugee Law* (pp. 101-142).

Maiani, F. (2022). Into the Loop: The Doomed Reform of Dublin and Solidarity in the New Pact. In O. A. Network, *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals on the New Pact on Migration and Asylum* (Vol. 38, pp. 43-60).

Mikolajczyk, B. (2020). The Migrant Crisis and Refugees - A Crisis of EU Solidarity. *Polish Review of International and European Law*, 169-197. Retrieved from <https://czasopisma.uksw.edu.pl/index.php/priel/article/view/7178> .

Moraru, M. (2022). The Future Architecture of the EU's Return System Following the Pact on Asylum and Migration: Added Value and Shortcomings. In D. Thym, *Reforming the*

*Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (Vol. 38, pp. 187-208).

Nissander, S. (2021). Pushing the Border Outwards: A Critical Discourse Analysis of the European Commission's Securitisation of Migration and the Right to Asylum. Master's Thesis in Human Rights. *Publications from Uppsala University*, 1-74. Uppsala Universitet. Retrieved from <https://uu.diva-portal.org/smash/get/diva2:1558814/FULLTEXT01.pdf>.

Nunzio, P. D. (2023, March). The crisis of the Common European Asylum System: rethinking solidarity in light of Human Rights. *UNIO - EU Law Journal*, 40-50.

*Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration'*. (2015). Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015AE4319>.

Pollet, K. (2016). A Common European Asylum System under Construction: Remaining Gaps, Challenges and Next Steps. In *Reforming the Common European Asylum System: The New European Refugee Law* (pp. 74-97).

Pozzo, R., Boubtane, E., D'Albis, H., Tonegutti, R. G., & Paravati, C. (2022). A Future Agenda for Migration Studies. In P. Scholten, *Introduction to Migration Studies: An Interactive Guide to the Literatures on Migration and Diversity* (pp. 483-500). Springer.

*'Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]'*, COM (2020) 0279. (2020, September 23). Retrieved from EUR-Lex: [https://eur-lex.europa.eu/resource.html?uri=cellar:2a12bbba-ff62-11ea-b31a-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2a12bbba-ff62-11ea-b31a-01aa75ed71a1.0001.02/DOC_1&format=PDF).

*Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013*. (n.d.). Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604>.

Terry, K. (2021, April 8). The EU-Turkey Deal, Five Years On: A Frayed and Controversial but Enduring Blueprint. *The Online Journal of the Migration Policy*

*Institute*. Retrieved from <https://www.migrationpolicy.org/article/eu-turkey-deal-five-years-on> .

*The European Union and Tunisia come to an agreement on a EUR 150 million programme* . (2023, December 20). Retrieved from European Commission : [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_6784](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6784).

*Tracking the Pact: Unaccountable new decision-making bodies and "adaptable responsibility"*. (2023, January). Retrieved from Statewatch: <https://www.statewatch.org/media/3693/eu-council-ammr-revised-presidency-draft-5165-23.pdf>.

Vara, J. S. (2022). Flexible Solidarity in the New Pact on Migration and Asylum: A New Form of Differentiated Integration? *European Papers*, 7(3), 1243-1263. Retrieved from [https://www.europeanpapers.eu/en/system/files/pdf\\_version/EP\\_eJ\\_2022\\_3\\_SS1\\_7\\_Juan\\_Santos\\_Vara\\_00613.pdf](https://www.europeanpapers.eu/en/system/files/pdf_version/EP_eJ_2022_3_SS1_7_Juan_Santos_Vara_00613.pdf).

Villa, M. (2020). *The Future of Migration to Europe*. ISPI - Italian Institute for International Political Studies. Retrieved from [https://www.ispionline.it/sites/default/files/pubblicazioni/isp\\_i\\_futureofmigration\\_web.pdf](https://www.ispionline.it/sites/default/files/pubblicazioni/isp_i_futureofmigration_web.pdf).

Zachová, A. (2023, July 6). *Visegrad divided on migration policy despite past alliances*. Retrieved from EURACTIV: <https://www.euractiv.com/section/politics/news/visegrad-divided-on-migration-policy-despite-past-alliances/> .

## **Case Law**

M.S.S. v. Belgium and Greece, Judgment, 30696/09 (European Court of Human Rights, The Grand Chamber January 21, 2011). Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-103050%22%5D%7D>.

C.K., and others v Republika Slovenija, Judgment, C-578/16 (CJEU, Fifth Chamber February 16, 2017). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CJ0578>.