

# Reforming the EU Asylum System: A New Path for Solidarity



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## A Human Rights Approach to Fair Migration Management

- The European Union shares responsibility for providing fair and dignified asylum procedures across Member States, but uneven asylum flows—especially in border countries—pose serious challenges.
- Since 1999, the Common European Asylum System has sought to manage such pressures, yet the 2015 refugee crisis exposed its limits, particularly in terms of solidarity and burden sharing.
- Recently, the 2020 New Pact on Migration and Asylum introduced a flexible solidarity mechanism, but it falls short of creating a truly common and rights-based migration framework.
- This policy brief argues for a comprehensive CEAS reform rooted in a human rights-based understanding of solidarity, aiming to ensure fairness, consistency, and the protection of asylum seekers across the EU.

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## The Evolution of the Common European Asylum System: Challenges and Reforms

Within the European Union (EU), Member States have a shared responsibility to welcome asylum seekers in a dignified manner and ensure that procedures are fair, effective, and standardised to produce similar outcomes throughout the whole EU territory. However, asylum flows are not constant and are unevenly distributed across Member States with countries that, given their position along the external border of the EU, withstand the highest number of arrivals of people fleeing their homeland.

With this in mind, in 1999 the EU began the construction of a Common European Asylum System (CEAS) as a mean to manage high influxes of displaced persons by accommodating persons in need of protection, while supporting Member States experiencing pressure on their asylum systems. The system was designed to harmonise asylum procedures, set common standards for the reception of asylum seekers, and determine the responsibility of each EU Member State in examining asylum applications.

Since its inception, the CEAS has undergone several phases of development and improvements, with key legislative instruments such as the Dublin Regulation<sup>1</sup>, the Asylum Procedures Directive<sup>2</sup>, and the Qualification Directive<sup>3</sup> put in place to create a more cohesive system.



Despite the progresses made, the 2015 refugee crisis imposed heavier and more uneven burdens on border states, exposing the weaknesses of the CEAS due to insufficient solidarity among Member States and the absence of robust agreements on responsibility sharing through a quota mechanism. This prompted the European Commission to propose a series of reforms, the latest one represented by the 2020 New Pact on Migration and Asylum. However, the Pact has faced strong criticisms, with many stakeholders arguing that it fails to adequately address the underlying issues of fairness, human rights, and the need for a truly common approach to migration.

## From Vision to Shortfall: The Problematic Design of the New Pact on Migration and Asylum

As presented by relevant stakeholders from the civil society, think-thanks, the European Parliament and the European Commission during a high-level conference held by the European Economic and Social Committee (EESC)<sup>4</sup>, the New Pact on Migration and Asylum does not deliver the changes needed to create a proper common European migration and asylum system, thus representing more a missed opportunity than the real reform that the CEAS needs.

Among the criticisms, **three** main strands stand out:

1

### Procedural and Legal Concerns

The Pact adopts an intergovernmental and political approach before the formal legislative process, sidestepping established EU legislative procedures and potentially undermining the role of the European Commission (EC) and the legislative safeguards provided by the EU Treaties.

### Externalisation & Human Rights Risks

2

The Pact reinforces a security-focused and deterrence-driven approach, emphasising border procedures, fast-tracking, and detention. This risks violating fundamental rights such as the right to asylum and the principle of non-refoulement, especially due to unrealistic operational expectations and underinvestment in infrastructure and resources.

3

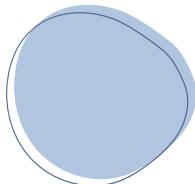
### Flawed Solidarity Mechanism

The Pact introduces a flexible form of compulsory solidarity, allowing Member States to choose between relocation, return sponsorships, or other support measures. This asymmetrical approach fails to ensure fair and consistent burden-sharing across the EU, lacks incentives for participation, and leaves critical gaps in addressing situations involving non-returnable migrants or mass influxes, perpetrating fragmentation.

In sum, the Pact currently falls short of its goal to provide the CEAS with a fair, efficient, and human rights-compliant protection to asylum seekers, while also ensuring a sustainable and equitable approach to managing migration across the EU. There is an urgent need for comprehensive reform to address these systemic weaknesses, with a focus on solidarity, shared responsibility, and the protection of fundamental human rights.

## Rethinking Solidarity in the Light of Human Rights: Towards a Fair EU Asylum System

For the CEAS to function in a more equitable, efficient, and human rights-compliant manner, the European asylum law needs to be interpreted in the light of a solidarity that requires, nonetheless, to undergo a paradigm change:

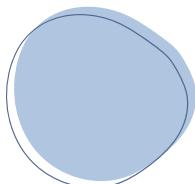


### **1. Anchor Solidarity in Human Rights Obligations**

Reframe the principle of solidarity in EU asylum policy to emphasise obligations toward asylum seekers, not just inter-state cooperation. Solidarity should support fundamental rights, including non-refoulement and the right to asylum.

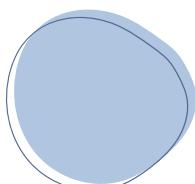


This translates into reforming the legal interpretation of the principle of solidarity enshrined in the Article 80 of the Treaty on the Functioning of the European Union (TFEU) in a way that prioritises individual protection over state burden-sharing, shifting from a state-centric to a rights-centric paradigm.



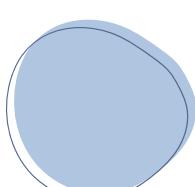
### **2. Replace “Flexible Solidarity” with Binding Commitments**

Move beyond voluntary schemes and establish binding responsibility-sharing mechanisms to ensure that all Member States contribute fairly to asylum processing and reception, in both financial and operational terms.



### **3. Use International Human Rights Standards**

Draw on global frameworks like the UN General Assembly's definition of solidarity<sup>5</sup> to operationalise equitable burden-sharing and a “responsibility to protect” approach within the EU context.



## Shifting the Paradigm: The Implications of a Human Rights-based Reform of the CEAS

The implementation of these policy recommendations will have far-reaching implications across the EU, both at the institutional and societal levels:

### Legal and Institutional Shift

- Reinterpreting Article 80 TFEU and advancing binding mechanisms would redefine EU competence in asylum policy, reinforcing supranational authority and reducing over-reliance on voluntary intergovernmental cooperation.
- It would enhance the role of EU institutions, especially the EC and the Court of Justice of the European Union (CJEU), in enforcing human rights-based asylum governance.

### Operational Impact on Member States

- Binding responsibility-sharing would reduce pressure on frontline countries (e.g., Italy, Greece, Spain), promoting fairer distribution of asylum responsibilities.

### Human Rights Compliance and International Credibility

- A rights-based interpretation of solidarity would strengthen the EU's compliance with international human rights obligations and enhance the EU's global image as a normative actor and humanitarian leader.

### Political and Strategic Considerations

- Moving away from "flexible solidarity" may face resistance from some Member States due to sovereignty concerns or political opposition to binding quotas.
- However, clearer obligations and a common legal basis could reduce political bargaining and improve the long-term sustainability of EU asylum policy.



## The EU Asylum Dilemma: Critique and Path Forward for a Rights-Based Solidarity Model

The current configuration of the EU Pact on Migration and Asylum falls short of delivering the transformative change needed to ensure a humane, rights-based and resilient CEAS. The emphasis on “flexible solidarity”, while politically expedient, is normatively weak and operationally inconsistent, allowing Member States to sidestep meaningful burden-sharing obligations. This has reinforced fragmentation, fostered mistrust, and failed to address long-standing governance deficiencies.

By contrast, reinterpreting solidarity through a human rights lens, and grounding it in binding legal commitments under Article 80 TFEU, presents a more principled and effective path forward. This approach promotes predictability, fairness and accountability, aligning EU policy with its own foundational values and international obligations.

However, this option is not without challenges as political resistance from Member States wary of ceding control or assuming additional responsibilities could stall or water down reforms. Moreover, implementation gaps may persist without strong monitoring and enforcement mechanisms at the EU level and greater attention to evaluation reports drafted by the actors in the field such as the UNHCR and different NGOs.

Despite these hurdles, the long-term benefits of a rights-based, legally anchored approach to solidarity—greater system resilience, improved compliance, and restored legitimacy—outweigh the political costs.

It is time for the EU to move beyond symbolic solidarity and embrace a model that reflects its commitment to human dignity and collective responsibility.

### Notes

<sup>1</sup>The Dublin III Regulation, that determines which EU Member State is responsible for the examination of an application for asylum, currently applying a ‘first country of entry’ principle (see “Country Responsible for Asylum Application (Dublin Regulation).” 2023. Migration and Home Affairs. Accessed January 8, 2023. [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)).

<sup>2</sup>The Asylum Procedures Directive, whose objective is to create a coherent system and therefore ensure that decisions on applications for international protection are taken efficiently and fairly (see “Asylum Procedures.” 2023. Migration and Home Affairs. Accessed January 8, 2023. [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/asylum-procedures\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/asylum-procedures_en)).

<sup>3</sup>The Qualification Directive, that sets “the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted” (see “Lex - 32011L0095 - En - EUR-Lex.” 2011. EUR. Accessed January 8, 2023. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>).

<sup>4</sup>See “New EU Pact on Migration and Asylum: A Missed Opportunity for a Much-Needed Fresh Start.” 2020. European Economic and Social Committee. November 30, 2020. Accessed January 11, 2023. <https://www.eesc.europa.eu/en/news-media/news/new-eu-pact-migration-and-asylum-missed-opportunity-much-needed-fresh-start>.

<sup>5</sup>The UN-General Assembly Resolution 59/193 better defines solidarity as “a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice, and ensures that those who suffer or benefit the least receive help from those who benefit the most”, adding a notion of “responsibility to protect” to its meaning (see KOTZUR, Markus. 2016. “Flexible Solidarity – Effective Solidarity?” Völkerrechtsblog – International Law & International Legal Thought. November 16. Accessed January 15, 2023. <https://voelkerrechtsblog.org/flexible-solidarity-effective-solidarity/>).

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#### The crisis of the Common European Asylum System: rethinking solidarity in light of Human Rights

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