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Principle of Solidarity and its Impact on the Harmonization of Asylum Law in the European Union

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Principle of Solidarity and its Impact on the Harmonization of Asylum Law in the European Union

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Against the backdrop of the migration processes that have been taking place in Europe over the last decade, disagreements over the content of the principle of solidarity have become an increasingly important factor on national political and legal agendas. In this context, it is important to analyze the evolution of the European Union (EU) asylum *acquis* starting from its very genesis – the Treaty of Amsterdam – to its current stop which appears to be the very recent collection of legal documents adopted by the European Parliament in April 2024 – the so-called *New Pact on Migration and Asylum* (New Pact). This research was carried out in order to assess the content and role of the principle of solidarity for the *Common European Asylum System* (CEAS) and the harmonization of the asylum *acquis*.
Keywords: harmonization, solidarity, burden sharing, Common European Asylum System (CEAS), New Pact on Migration and Asylum.

Solidarumo principas ir jo vaidmuo, harmonizuojant Europos Sąjungos prieglobsčio teisę

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Pastarąjį dešimtmetį Europoje vykstančių migracijos procesų fone nesutarimai dėl solidarumo principo turinio tampa vis svarbesniu veiksniu valstybių politinėse ir teisinėse darbotvarkėse. Šiomis aplinkybėmis Europos Sąjungos prieglobsčio teisyno raidos analizė, pradedant nuo pat jo ištakų – Amsterdamo sutarties – iki šių dienų transformacijų, Europos Parlamentui 2024 metų balandį patvirtinus naują teisinių dokumentų rinkinį – Naująjį migracijos ir prieglobsčio paktą, yra itin aktuali. Tyrimas atliktas siekiant įvertinti solidarumo principo turinį ir vaidmenį Bendrajai Europos prieglobsčio sistemai (BEPS) bei Europos Sąjungos prieglobsčio teisynui harmonizuoti.
Pagrindiniai žodžiai: harmonizavimas, solidarumas, naštos pasidalijimas, Bendroji Europos prieglobsčio sistema, Naujasis migracijos ir prieglobsčio paktas.

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Introduction

Solidarity has been and remains one of the core values of European integration, which, over time, has been increasingly declared and reflected in various EU documents, ranging from the founding Treaties and the *Charter of Fundamental Rights of the European Union* (EU Charter) to various political declarations and proposals. This undoubtedly indicates the growing importance of the principle of solidarity. On the other hand, there is a noticeable gap between the declared solidarity in certain areas and the actual actions of the EU and its Member States. The events of the past decade in shaping a common EU migration and asylum policy have shown that the concept of solidarity is often used more strategically, aiming to create an impression of upholding political values or formally meeting the solidarity criterion, rather than genuinely seeking a broader understanding of the concept itself.

Solidarity can be defined in terms of the strength of collective orientation, meaning the extent to which the states should relinquish their autonomy and freedom in order to achieve collective interests (Stjernø, 2005). Solidarity, as cooperation aimed at reducing tensions between states and addressing the humanitarian challenges posed by migration, is emphasized in the 1951 *Convention Relating to the Status of Refugees* (Geneva Convention). It is also declared in the EU legal documents subsequently adopted on the basis of Geneva Convention, which define the EU asylum and migration policy and harmonize the EU asylum law. Nevertheless, the EU member states struggle to find a balance between national and collective interests when accepting asylum seekers. Different proposals regarding the principle of solidarity and its forms of implementation are driven by fundamental differences in approaches to migration and ways of resolving its crises – on the one hand, viewing the crisis as a threat to national security, and, on the other hand, understanding the causes of such crises, along with their social and humanitarian aspects. This is clearly reflected in the long-lasting reform process of the *Common European Asylum System* (CEAS).

However, the question is whether the political strategy of individual Member States should shape the interpretation of the solidarity principle. Or should the asylum *acquis* reform be based on the solidarity commitment already undertaken in the founding Treaties, regardless of the current disagreements? If so, can the proposed solutions to asylum-related issues align with the true nature of the principle of solidarity?

In the academic literature, solidarity and its role in the EU have been examined from various perspectives – ranging from the normative evaluation of solidarity (Stjernø, 2005; Sangiovanni, 2013; Milazzo, 2023) to its institutionalization (Maduro, 2000) and the conceptual history of solidarity and its roots in Roman Law (Karageorgiou and Noll, 2022). Lithuanian scholars have also assessed the role of the principle of solidarity in specific EU policy fields, such as healthcare regulation (Špokienė, 2010), energy (Milčiuvienė, 2013), or welfare state concepts (Taminskaitė, 2022). While the influence of the principle of solidarity on inter-state relations and its forms of implementation in the EU asylum policy is not new (Brouwer, 2021; Vara, 2022; Milazzo, 2023), it remains a relevant and underexplored area, particularly given the increasing frequency of migration crises which have a significant impact on the asylum policy.

Therefore, the aim of this research is to investigate the impact of the principle of solidarity on the harmonization of the EU asylum law. In this context, the research focuses on the development of the Common European Asylum Policy and the problematic aspects of the Asylum Law that have emerged from the Amsterdam Treaty to the New Pact, which have significantly contributed to the stagnation of asylum *acquis* reforms. To achieve this goal, the study sets forth several tasks: to reveal the prerequisites for the harmonization of the EU Asylum Law, to identify its essential problematic aspects, and to examine the role of the principle of solidarity in this process.

The research is based on the historical, teleological, legislative intent and systematic analysis methods. The historical research method is employed to assess the development of the EU asylum policy within the context of its relevant time periods. The teleological method is used to determine the objectives of the Asylum Law regulation. The legislative intent method is used to determine the true intentions behind the adoption and later reforms of the EU asylum *acquis*, as well as to evaluate how these intentions have been fulfilled in practice. The systematic analysis method is significant for identifying the essential problematic aspects of the harmonization of EU the Asylum Law, particularly those related to the interpretation and implementation of the principle of solidarity.

1. The Principle of Solidarity in the European Union

The principle of solidarity is anything but a new concept in the EU law. From the very beginning, solidarity has dominated as one of the core political values upon which European integration was built. In the Preamble to the Treaty establishing the European Coal and Steel Community, it was already stressed that "Europe can be built only by concrete actions which create a real solidarity and by the establishment of common bases for economic development". Acting in a united, coherent and solidary manner while defending the common interests, human rights and the preservation of international peace and security has been also emphasized in the *Single European Act*, and later reiterated in the EU primary law – specifically, the *Treaty on European Union* (TEU), the *Treaty on the Functioning of the European Union* (TFEU), and the *EU Charter*. The commitment to solidarity has thus been continued, gradually broadening its scope from a value that binds the Member States together in the process of economic integration to a value that unites the Member States in the implementation of the common and national policies within the EU.

Consequently, solidarity is a common value promoted by the EU, equivalent to values such as respect for human rights, freedom, equality, and the rule of law. The political expression and significance of solidarity in the EU have not diminished for decades, and its prominence is evident in all documents that shape the vision and strategy of the EU. Solidarity is a core principle of the EU, which elaborates on the idea of mutual solidarity among citizens, international solidarity among member states, and the Union solidarity, functioning both within and beyond its borders. Therefore, the principle of solidarity in the EU can be understood in several ways: i) as member states supporting each other whenever needed; ii) as cooperation toward common goals (Taminskaite, 2022, p. 52–55); iii) and as the aspect of solidarity among the Union citizens (Sangiovanni, 2013, p. 221)[1].

However, a universal legal definition of the principle of solidarity is difficult, because it is not easy to formulate what are the key value elements of this principle, and to what extent they could be applied. The EU principle of solidarity should therefore be understood intuitively: as a common value orientation, a collective consensus and actions by the Member States in pursuit of a common goal or in order to provide assistance to each other (Špokienė, 2010, p. 333). Although solidarity is one of the central concepts of the EU political thought, the different ways in which this principle operates in different areas may also lead to differences in its content and forms. In those areas where certain solidarity-based mechanisms have already been historically used and voluntarily adopted as a form of 'good practices', cooperation between the Member States has taken an advanced form of integra-

[1] Due to the limited scope of this article and considering the research aim to reveal the evolution and challenges of the mutual relationships between/among the EU member states in implementing the principle of solidarity in the field of asylum and migration policy, the article will further focus solely on the aspects of the Member States' mutual solidarity.

tion (e.g., in social protection and healthcare, where regulatory models are based on certain common mutual commitments, and the financing and provision of public services). However, the same cannot be said about cooperation in areas such as the area of freedom, security, and justice, where national interests still predominate, and therefore the national policies largely differ due to the broad geography of the EU, not to mention historical, cultural and political diversity within the EU. These differences are still of a scale and nature that makes it difficult for the Member States to agree on a common will in these areas, especially in terms of the specific forms of implementation of the solidarity principle in the Asylum Law. To understand the challenges faced by the Member States in cooperating through mutual assistance and collaboration to reach an agreement on a solidarity-based common asylum, immigration and external border control policy, as well as the creation of a unified asylum system for all Member States, it is appropriate to separately discuss the role of the principle of solidarity in the process of harmonizing the Asylum Law.

2. Harmonizing Burden Sharing: From Intergovernmental Agreements to Asylum *acquis*

The preamble of the Geneva Convention states that "the granting of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation". Therefore, "all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States". Consequently, cooperation and burden-sharing between States has been a cornerstone of the development of the Asylum Law from the very beginning. However, it was not exactly the case in the EU.

2.1. Dublin Convention

The origins of the EU asylum *acquis* can be traced back to the *Dublin Convention*. Yet, the adoption of this document was inspired purely by pragmatic considerations – notably, by the intent to achieve and maintain the integrity of the Schengen Area, while avoiding secondary movements of third-country nationals within the European Community, rather than seeking a formula to balance the obligations and responsibilities of the Member States arising from the reception of individuals seeking asylum in Europe. Therefore, the main purpose of the 1990 Dublin Convention (which came into force in 1997) was *not* to establish a proper and fair asylum procedure, but rather only to identify which Member State should be responsible for examining an asylum application. A very formal approach has been used to address this issue, namely that the responsibility of the Member State derives directly from the proper exercise of its duty to control the external border of the Community. Thus, it was the Dublin Convention that laid the foundation for the famous "country of the first entry" rule. This inherently means that the Member State of the first entry is responsible for processing an asylum application[2]. This rule, however, from the very beginning, sparked debates regarding its alignment with the principle of solidarity among the Member States.

[2] With certain exceptions for family members of asylum seekers already residing in the Community, as well as for individuals who have been issued visas and residence permits

2.2. The Treaty of Amsterdam and Tampere Conclusions

The first turning point in the field of the EU Migration and Asylum Law occurred on May 1, 1999, when the *Amsterdam Treaty*, committing the EU to establish the CEAS based on the Geneva Convention rules and to do it by legislation at the EU level, came into force. Among other things, this treaty set the goal of maintaining and developing the EU as an area of Freedom, Security, and Justice, ensuring the free movement of persons along with the relevant measures related to external border control, asylum, immigration and crime prevention. To achieve this goal, the EU Council indicated that, within five years of the Amsterdam Treaty coming into force, it would adopt asylum measures in accordance with the Geneva Convention and other relevant agreements in these areas. These measures would include criteria and mechanisms to determine which Member State is responsible for examining an asylum application, minimum standards for the reception of asylum seekers, as well as standards for the classification of third-country nationals as refugees, and procedures for granting or withdrawing the refugee status within the EU. The objective was to promote a balance of efforts among the Member States in receiving refugees and displaced persons and to bear the consequences of their reception.

These amendments had a decisive impact on the functioning of the EU in the field of the asylum policy, which was primarily intended to embody mutual political solidarity[3]. This transition from an intergovernmental level[4], characterized by a significant political nature, slowly became an internal process of the EU. Although national policy interests were not eliminated from this process, the directions of the asylum policy at least became clearer and more defined.

The Amsterdam Treaty highlights that the new asylum instruments being created by the EU must comply with the provisions of the Geneva Convention, which means that the provisions of the Geneva Convention are adhered to not only by individual EU Member States but also by the EU itself. This commitment was echoed in the Conclusions of the European Council held in Tampere on October 15–16, 1999. In Tampere, the leaders of the EU Member States decided that the ultimate goal is to create a CEAS, which should lead to a unified asylum procedure and a uniform status for those granted asylum, applicable throughout the EU, in the long term. It was also noted that the CEAS should be based on political solidarity and promote a balance of efforts between the Member States in receiving refugees, as well as solidarity in response to humanitarian challenges. This phase of developing the CEAS was fully completed on January 2, 2006, when all major asylum instruments were officially adopted and came into force – these were standards for the minimum reception conditions for asylum seekers which were agreed upon, and the concepts of refugee and subsidiary protection were defined and minimum rules for asylum procedures were also established. It was a clear shift from pragmatic to value-based objectives in this area. Yet, its contribution was only a theoretical one, since the "country of the first entry" rule still found its way in the newly adopted Dublin Regulation (EU Regulation No. 343/2003) as the goal of ensuring the protection of the EU's external borders, and the proper functioning of the Schengen Area still continued to play a primary role.

Despite the positive objectives of creating the CEAS, it gradually became clear that the asylum instruments defined by the Amsterdam Treaty were still insufficient to achieve these goals. In this regard, it is noteworthy that the Amsterdam Treaty is committed to adopting only minimum asylum

[3] Article 1, Paragraph 10 of the Amsterdam Treaty

[4] Until then, the Community's powers regarding third-country nationals were essentially limited to aspects related to the free movement of the Community citizens and their family members within the Community, as well as its visa policy (following TEU). The issues of implementing the Asylum Law, concerning the identification of the state responsible for examining an asylum application submitted in the Member State, were addressed at the intergovernmental level by the Dublin Convention, while other areas were essentially left to the national law of the Member States.

measures without excessively restricting the sovereignty of the Member States, thus leaving all other issues exclusively to the national legislation. Therefore, in developing the CEAS, the chosen approach, which focused primarily on minimal harmonization while leaving the Member States with as much flexibility as possible, revealed a tendency to abandon the goal of establishing common minimum standards meant to unify the different asylum systems, and instead opted for the applicability of domestic law (Nicholson, 2006, p. 524). In turn, the diversity of the national asylum policies and practices, among other factors, influenced by territorial changes within the EU as well as by differing factual situations (e.g., the varying numbers of asylum seekers and the approvals of their applications) in the Member States, hindered the ability to operate their asylum systems uniformly and, most importantly, effectively. Thus, the focus was based more on measures for protecting the external borders of the EU and to prevent entry into the EU, rather than on efforts to enhance the uniformity of the asylum procedures themselves and the related effectiveness of the CEAS.

2.3. The Treaty of Lisbon

After identifying a lack of common asylum measures among the Member States, which limited equal access to asylum procedures in the EU, the need for greater legal harmonization was recognized. These goals were addressed by the Treaty of Lisbon, which redefined the CEAS not through "minimum standards," but rather with specific measures on uniform asylum and subsidiary protection statuses, as well as common procedures. The Treaty of Lisbon also incorporated the CEAS and the related asylum policies into the TFEU, thus making it part of the EU primary law. Harmonization of the EU Asylum Law was carried out through a solidarity dimension – Article 80 of the TFEU established a specific principle of solidarity and fair sharing of responsibility between the Member States in the EU asylum policy and law.

Following the changes introduced by the Treaty of Lisbon, the CEAS not only came under the broader principle of solidarity, but its implementation was specifically governed by the principle of solidarity enshrined in Article 80 of the TFEU. This principle also incorporates fair sharing of responsibility between the Member States. It can be assumed that the concept of solidarity, in this context, is somewhat more defined in the EU primary law, considering the specific nature of asylum-related legal relations and the commitments under the Geneva Convention, which emphasizes international cooperation and the reduction of tensions between the states. Furthermore, Article 80 of the TFEU should be read in conjunction with Article 4(3) of the TEU, which requires the Member States to assist each other in carrying out the tasks arising from the EU treaties, based on the principle of sincere cooperation. In this context, the close relationship between the EU law and the national law of the Member States is particularly important, meaning that the objectives of the EU legislation are primarily achieved through national regulatory measures. The Member States are required to take appropriate actions to ensure the fulfillment of their obligations under the TEU, while national legal systems must be aligned as far as possible with the wording and purpose of the EU legislation, without narrowing its scope of application[5].

Although Article 80 of the TFEU explicitly mentions 'financial implications' as a form of solidarity, this does not imply that other means of implementing the solidarity principle are somehow excluded. The article speaks to a collective approach to challenges and mutual support, requiring a fair sharing of burdens. The duty of the Member States to show solidarity and share responsibility fairly should

[5] For a more comprehensive discussion on this matter, refer to the CJEU Grand Chamber ruling in the case of *Pfeiffer and others*, in the joined cases C-397/01 to C-403/01, as well as the case law cited in this judgment.

not be limited to emergency situations, but should rather be based on a common obligation to ensure that the fundamental right to seek asylum, enshrined in the Geneva Convention, is fully respected in practice[6] (Brouwer *et al.*, 2021, p. 154).

The Court of Justice of the European Union (CJEU) has interpreted solidarity in a general sense as a balance between the rights of the Member States to benefit from the advantages of the Community and their obligation to adhere to common rules. The Court emphasized that if a Member State is guided solely by its national interests and unilaterally disrupts this balance between the rights and obligations derived from its membership in the Community, it raises doubts about the equality of the Member States before the Community law. Such a failure to uphold the duty of solidarity, which the Member States have accepted by joining the Community, undermines the very foundation of the Community's legal order (decisions of the CJEU, 1972, 1978). This interpretation of the CJEU has been consistently developed in recent case law regarding the fulfillment of obligations in the field of the common asylum and migration policy. The CJEU, referring to decisions made under Article 78(3) of the TFEU, has stated that when an emergency arises in one or more Member States, the burden created by the adoption of temporary measures for the benefit of those Member States must be shared among all other Member States. This must be done in accordance with the principle of solidarity and fair sharing of responsibility between the Member States, without creating artificial obstacles that would hinder the proper implementation of this principle. Furthermore, the Member States cannot unilaterally disregard the objective of solidarity or fail to meet their obligations (decisions of the CJEU, 2015, 2017).

To conclude, the Treaty of Lisbon's more precise language on the common asylum policy removed its previous secondary role, which was so evident under the Treaty of Amsterdam. The Treaty of Lisbon elevated the CEAS to a core commitment to create an area of Freedom, Security and Justice. Solidarity, reinforced by the element of fair responsibility-sharing, has thus become a foundational feature of asylum policy. This shift reflected a new vision for the EU, moving beyond merely economic integration. A key addition of the Treaty of Lisbon was the legal framework enabling not only the harmonization of asylum reception conditions and procedures but also the establishment of a uniform asylum status for third-country nationals across the EU (Tsourdi and Costello, 2021, p. 803–804).

The second stage of harmonization of the EU Asylum Law, prompted by changes made by the Treaty of Lisbon, took place from 2011 to 2013. This stage led to the formation of the current asylum *acquis*, primarily consisting of the so-called Dublin III Regulation (EU Regulation No. 604/2013), which determines the Member State, responsible for examining asylum application, along with three main directives (EU Directives 2011/95/EU, 2013/32/EU, and 2013/33/EU). Additionally, during this phase of the CEAS reforms, the establishment of a new institution – the European Asylum Support Office[7] – was intended to facilitate cooperation of the Member States and mutual feedback, thereby contributing to more effective harmonization of the Asylum Law. It was created to assist in implementing the CEAS measures by enhancing solidarity between the Member States through practical cooperation in the field of asylum, establishing mechanisms for information exchange, sharing best practices, and providing support to those Member States facing pressure on their asylum and reception systems (EU Regulation No. 439/2010), and thus promoting a unified approach to asylum systems and a fair and solidary distribution of responsibilities.

[6] In this regard, it is also important that the right to asylum, as a fundamental human right, is enshrined in Article 18 of the EU Charter.

[7] Now *European Union Agency for Asylum*. Due to the limited scope of this article, the activities of the European Union Agency for Asylum will not be addressed.

3. From the New Crisis of Migration to the New Pact on Migration and Asylum

As migration flows continued to grow over time, they surged significantly in 2015 due to the civil war in Syria, leading to an influx of a large number of new asylum seekers, particularly at the borders of the Southern EU Member States. This migration crisis that struck the EU quickly became a catalyst for further reforms in the CEAS.

In the context of the migration crisis of 2015–2016, the biggest challenge was not the regulation of the asylum procedures themselves, but rather the implementation of the principle of solidarity. The so-called Dublin system and its 'country of first entry' rule still dictated the distribution of responsibilities among the Member States. And it became evident that this rule was entirely incompatible with the principle of solidarity and fair responsibility-sharing.

As noted by the European Commission in 2015, the asylum systems of some Member States faced unprecedented pressure during the crisis, and the EU had to act without waiting for this pressure to become unmanageable. Recognizing that local reception and processing capacities were maximally strained due to the high number of arrivals, the European Commission decided that an active response was necessary (Communication from the Commission, 2015). This involved activating a temporary distribution mechanism for individuals clearly in need of international protection to ensure fair and balanced participation and collective efforts from all Member States.

Thus, there was a concerted effort to implement the solidarity commitment enshrined in Article 80 of the TFEU, seeking a balance between the rights and obligations of the Member States in the field of asylum, particularly with the objective to alleviate the burden on the primary arrival points for asylum seekers. An *ad hoc* solution was chosen in the form of a mandatory relocation mechanism for asylum seekers (EU Council decisions No. 2015/1523, 2015/1601). This mechanism established relocation quotas for asylum seekers within EU, highlighting contributions to solidarity and a fair share of the burden.

Considering the challenges faced by the CEAS, the European Commission presented a package of asylum policy reforms in 2016. The Commission emphasized that the migration crisis had exposed the weaknesses in the CEAS, particularly the flaws in the design and implementation of the Dublin Regulation. These shortcomings were primarily since the Dublin system was never intended to ensure sustainable responsibility-sharing for asylum seekers across the EU (Communication from the Commission, 2016). Therefore, the proposal aimed to ensure a high level of solidarity and fair responsibility-sharing between the Member States, focusing on the equitable distribution of asylum seekers. This meant that the Member States would share responsibility specifically during the reception of asylum seekers. Achieving this goal required a fundamental reform of the Dublin system, with the proposal suggesting that the mandatory redistribution mechanism within the EU should no longer be a temporary measure but instead be integrated into the Dublin Regulation.

However, the proposal failed to gain sufficient support, and the Commission was forced to continue searching for increasingly compromise-driven versions of the CEAS reform. In 2020, the Commission presented a proposal for the New Pact (Communication from the Commission, 2020). In the New Pact, the ambitious goal of high solidarity was lowered to focus more on ensuring effective cooperation between the Member States in swiftly handling the return of asylum seekers, rather than in their reception and processing of asylum applications. As a result, the system did not move far from the original Dublin framework. The principle of solidarity and fair sharing of the responsibility evolved into what became known as a 'new solidarity mechanism' which was soon labeled as 'differentiated solidarity' (Vara, 2022; Karageorgiou and Noll, 2022; Tsourdi and Mavropoulou, 2022) and 'asymmetric solidarity' (Milazzo, 2023).

4. Recurring Challenges in Implementing Principle of Solidarity and Fair Responsibility Sharing in the New Pact

The solidarity mechanism if the New Pact is based on the principle of voluntarism, where all Member States would contribute to maintaining the CEAS by sharing the costs associated with the arrival of asylum seekers in the EU. This would reduce the pressure on the Member States facing the greatest burden due to their geographical location, so they no longer feel penalized for it. Under this new mechanism, which the European Commission emphasizes as both more flexible and more effective (*effective while flexible*), the Member States would have the freedom to choose the most suitable form of participation in sharing responsibility for asylum seekers (Communication from the Commission, 2020). The principle of solidarity and its content is defined in the new Regulation on asylum and migration management which will replace the Dublin Regulation. Under this regulation, an annual solidarity pool is established, and the new solidarity mechanism is enshrined as mandatory. However, it is based on the presumption of the most favorable option for the Member State rather than on a binding commitment. The forms of solidarity that are considered to be of equal value are as follows: i) relocations of asylum seekers; ii) financial contributions that might have a direct impact on the migratory flows at the external borders; iii) alternative solidarity measures in the field of migration, reception, asylum, return and reintegration and border management (EU Regulation 2024/1351). Moreover, the Member State of the first entry remains responsible for the reception of the asylum seeker, including the administrative and factual burden of the detention of asylum seekers. This is certainly an indication that the asymmetry in the scope of commitments of the Member States remains unchanged.

Thus, the New Pact primarily focuses on supporting the relocation or return of third-country nationals, indicating that the Member States will have the flexibility to decide how to allocate their efforts between relocated asylum seekers and those whose return would be supported, and, if so, in what proportions. As mentioned, previous migration crises have clearly shown that the most significant challenges for the CEAS arose specifically in the process of receiving asylum seekers and processing their applications, where the implementation of the commitment to solidarity and fair responsibility sharing was most needed. For this exact reason, mechanisms for mutual assistance between the Member States were attempted to be reformed by proposing amendments to the Dublin system in the first place. With all these amendments being rejected, and with attention shifting to other forms of assistance, the problems arising from the implementation of the principle of solidarity remain *de facto* unaddressed. In the absence of a mandatory mechanism for the relocation of asylum seekers within the EU and sanctions for the Member States refusing to participate in such relocation, the responsibility for receiving asylum seekers will continue to fall on the Member States of the first entry (Milazzo, 2023, p. 3).

In addition, it should be stressed that the implementation of the relocation procedure is linked to several formal requirements to be fulfilled by the Member State of the first entry and shall be carried out only when all appeal procedures have been finished. The New Pact focuses on the management of external EU borders, which should include the screening of asylum seekers to determine their status and register them in the EU databases, considering this as the first step in a common asylum and return system. This logic again concentrates on the 'hotspot' method (Brouwer *et al*., 2021, p. 57), in the sense that the responsible implementation of the border control procedures is deemed a necessary condition for the activation and functioning of the new solidarity mechanism. Even more so given that the EU law does not offer any common EU rules on the relocation procedure as it shall be carried out in accordance with the national law or even bilateral administrative arrangements between the Mem-

ber States. As mentioned, relocation also may be replaced by another form of solidarity – financial contributions, which will be considered equivalent.

However, it remains unclear from the provisions of the New Pact why a part of the EU Member States should be allowed to voluntarily and flexibly contribute to only one aspect of the CEAS (contrary to the rulings of the CJEU[8]) and under the condition of limited responsibility for the implementation of the EU law. The CEAS is a multi-dimensional system encompassing various resources used over time, including human, financial and non-financial resources, as well as different processes and their stages. Thus, based on the obligation of solidarity, the Member States should not only benefit from the advantages provided by the CEAS but should also adhere to common rules and jointly bear responsibility for the maintenance of the entire CEAS, without opposing them to national interests (Milazzo, 2023, p. 7).

To summarize, the New Pact does yet not guarantee solidarity and fair sharing of responsibility between the Member States at the reception stage. Moreover, it does not fully regulate the relocation procedure itself, by virtue of leaving it to the Member States to decide. This lack of regulation not only leaves room for additional disputes but also will slow down the asylum procedure by imposing additional administrative burdens on the receiving Member States. Moreover, the Member States are left with the broad option of choosing not only which stage of asylum they wish to participate in, but also the form of their participation in the CEAS. Meanwhile, the Member States of the first entry are left without such a choice.

Conclusion

1. As it has already been seen from the recurring migration crises, the principle of solidarity within the element of fair sharing of responsibility between the Member States is crucial for the proper functioning of the CEAS. Article 80 of the TFEU establishes an indivisible principle of solidarity for the entire EU asylum policy, complemented by a component of fair sharing of responsibility, which should not be seen as a solidarity by choice or the most pragmatic solidarity.
2. The solidarity and fair sharing of responsibilities between the Member States should cover the phase of the reception in the first place, with the rules of the Dublin system being amended accordingly as the number of asylum seekers in a certain Member State depends directly on its geographical position in the EU and has no key connection with the border control itself. Therefore, the current CEAS reform, at least in terms of solidarity, seems to be more exterior than a genuine demonstration of the will to fairly share the burden of receiving asylum seekers.
3. The asymmetric sharing of responsibility for asylum seekers between the Member States, because of flexible (and therefore limited) solidarity, is a pathway to limited integration, and it threatens to undermine the objective of creating an effective common asylum procedure within the EU.

[8] As previously mentioned, the CJEU rulings in the joined cases C-643/15 and C-647/15, as well as in cases C-715/17, C-718/17, and C-719/17, provide clarifications regarding the proper distribution of responsibilities in the area of the Common asylum and migration policy to all the member states, as well as the prohibition of unilaterally refusing to fulfill such obligations.

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