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The Emperor without Clothes?

Explaining the Choice for a Flexible Solidarity Mechanism proposed in the Asylum and Migration Management Regulation

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Abstract

During the so-called "refugee crisis," when the Dublin system of refugee allocation failed, the Commission unsuccessfully attempted to establish a legislative framework for solidarity-based relocation. By proposing legal flexibility in its initiative for a Regulation on Asylum and Migration Management, the new von der Leyen Commission has resurrected the issue and brought it back on the legislative agenda. However, it appears to be counterintuitive that the Commission has proposed this regulation as it would constitute a dis-integrative step departing from policymaking through robust and uniform legal arrangements. But why did the Commission nevertheless decide to initiate such a proposal? This puzzle will be addressed in this Master's thesis by applying a novel perspective that attempts to explain the Commission's motivations in light of dis-integration and compliance research applied to the Commission's peculiarities. Its considerations will be examined through a qualitative content analysis. The findings suggest that the Commission sees controlled dis-integration as the lesser evil and that it is heavily constraint by the interests of other actors giving much importance to a vocal minority against uniform relocation legislations.

Keywords: European Commission, Dis-integration, Non-compliance, EU Migration and Asylum Law and Policy, Common European Asylum System, Solidarity.

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Affidavit

I affirm in lieu of an oath that I have produced the following work independently and without the help of others and that I have not used any aids other than those specified in the work. All passages that have been taken from publications, either literally or in analogy, are marked as such.¹

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A handwritten signature in blue ink, appearing to read 'D. Krämer', with a long horizontal stroke extending to the right.

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List of Abbreviations

Art.	Article
CEAS	Common European Asylum System
COM	European Commission
ECJ	European Court of Justice
EP	European Parliament
EPRS	European Parliamentary Research Service
EU	European Union
iPEX	EU Interparliamentary Exchange Data Base
LIBE	Civil Liberties, Justice, and Home Affairs Committee
lit.	<i>littera</i>
MEP	Member of European Parliament
OJEU	Official Journal of the European Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

I. Introduction

Since Brexit at the latest, there has been intense discussion about the phenomenon of European dis-integration. The research debate evolving around theoretical explanations of dis-integration focuses mainly on the role of member states, which try to regain power and competences either by leaving the EU or by shifting certain decision-making powers back to the national level. Valuable contributions such as those of Schimmelfennig (2018) or Vollaard (2014, 2018) were able to convincingly explain the reasons for member states' behaviour in this respect. However, previous research has largely disregarded supranational actors such as the Parliament or the Commission in this context (cf. Vollaard 2014: 3). This national bias seemed well justified since it can be assumed that EU organs pursue policies that are as harmonised as possible. Otherwise, they would curtail their own power. Nevertheless, the Commission has recently counterintuitively proposed legal flexibility for the first time, which is tantamount to a dis-integrative step. This phenomenon occurred in the policy field of violence-induced migration.

After the so-called "refugee crisis" in 2015, the regulatory distribution mechanism for those who entered the EU irregularly through its exterior borders, the so-called Dublin system, collapsed (cf. von Braun 2017). The reason for this policy failure appeared to be a heightened pressure of violence-induced migration on peripheral EU member states, *inter alia*, precipitated by an intensification of the Syrian civil war. It is uncontested in the research literature that this policy failure exposed a "solidarity crisis" (Radjenovic 2020) within the EU. A comprehensive legislative package intended to modify and strengthen the CEAS' legal structure during the 2014-2019 legislative term eventually failed to owe to an internal deadlock within the Council (cf. EP 2021a). Meanwhile, the incumbent von der Leyen Commission seeks to replace the Dublin system in its proposal for an "Asylum and Migration Management Regulation" establishing a new solidarity mechanism (cf. *ibid.*; Carrera 2021: 9f.; EPRS 2020: 1). However, this proposal permits member states to choose their contribution form, ostensibly enabling "flexible solidarity" (Dimitriadi 2020: 7; cf. COM 2020c: 18). Both the legal and political science literature express strong reservations about this approach. It is highly doubtful whether the proposed legislation complies with the principle of solidarity as enshrined in EU primary law. There is a prospect that adequate burden-sharing may not be realizable, leading to "legal fragmentation" (Scicluna 2021: 655; cf. Art. 80 TFEU; Carrera 2021: 9; Dimitriadi 2020: 7; ECJ 2019; another view: Maiani 2017).

Considering this, one may reasonably ask why the Commission pursued such an ambiguous and legally questionable solution. A retrospective softening of a legally binding framework through optionality may not only result in a loss of political control by the Commission, but also in an erosion of integration through (robust) law as it has been pursued hitherto. Does the Commission strategise with possible costs of this flexible scheme in order to eventually reach a new regime arrangement? Is it to improve member states' compliance with their obligations to take over refugees, which has been lacking in recent years? To address this puzzle and these sub-questions about the Commission's counterintuitive behaviour, the overarching research question "*Why did the Commission propose a flexible solidarity mechanism in the Asylum and Migration Management Regulation?*" will be addressed from an interdisciplinary (political science and law) perspective employing an abductive methodology that allows for inductive supplementation of deductively developed assumptions. The Master's thesis strives to enhance understanding of a supranational actor's behavioural dispositions, such as the Commission. It will be shown whether it proves itself to be an emperor without clothes, as a former Interior Minister of the Czech Republic had accused it of being by trying to achieve a robust legal framework (cf. Chovanec 2015).

First, a concise literature review will be conducted to elucidate the research's academic and social relevance. Second, a theoretical framework of analysis will be developed by combining different streams of literature. Third, after elaborating on the research design and chosen methodology, the analysis of the Commission's rationale for the proposed regulation is to be examined. Finally, the study results will be critically reflected, and open questions and problems regarding further scientific engagement with the topic will be addressed.

II. Literature Review and Contribution

The following chapter reviews selected pertinent literature addressing issues of incomplete harmonisation, unsuccessful reform initiatives, and why actors resist further vertical and horizontal integration at the EU level. These findings illustrate the academic and societal value of exploring the rationale behind the Commission's counterintuitive behavioural patterns.

1. State of the Field

In the scientific examination of why integration attempts have failed and why there has been a deadlock in negotiations on robust regulatory frameworks, the focus is mainly on the member states, respectively the Council as the representation of nation-state governments within the

EU's legislative system. As such, the focus of the debate follows the widespread view in the literature that although far-reaching competences have been transferred to the supranational level and therefore the EU is often referred to as a political system *sui generis*, it is nevertheless primarily and foremost an “association[...] of states” (Zervaki 2014: 11), in which member states play the crucial role in integration theory. While certain sovereign powers have been ceded to the supranational level, competence-competence remains at the national level. *Id est*, the EU cannot create its competences without the unanimous assent of all member states. This principle is known as limited, enumerative individual conferral of competences (cf. Art. 5 (1) TFEU; Blanke/Mangiameli 2013: 255ff.; Cloots 2016: 92; Müller-Graff 2009: 114f.).

Consequently, representatives of liberal intergovernmentalism describe the reasons for opposition to further integration and thus transfer of competences in domestic conditions mirrored in behaviour at the EU level (cf. Andersson 2016; Puetter 2012: 161f.; 2014: 1ff.; Zaun 2020: 2f.). For instance, Zaun (2020: 6) convincingly argues in the context of a case study in the deadlocked CEAS reform under the 2014-2019 Juncker Commission that when national governments:

“[...] see rising support for right-wing populist parties are likely to consider asylum policies more salient and adopt a stronger position on this issue.”

Thus, if a policy is unpopular domestically in some fields, such as migration from predominantly Islamic nation-states (cf. Godziak/Márton 2018), governments are less likely to agree to it – especially exacerbated if an action has re-distributive ramifications – since politicians strive to be re-elected.

Scholars of new-intergovernmentalism, on the other hand, presuppose that the former distinctions between high and low politics as known from the classical integration theory of intergovernmentalism have dissolved (Bickerton et al. 2015: 715) due to nation-states' awareness of diminishing power, policy domains are being re-evaluated and subject to a “rapid politicisation” (ibid.). High politics refers to extremely contested policy issues that attract nations to “articulate national sovereignty reservations” (Bieling/Lerch 2012: 22; translation from German, DK). As a result, member states tend to oppose supranationalisation because of a feared zero-sum game i.e., benefits can at most cover but not surpass undesired sovereignty costs (Holler/Illing 2009: 55f.). As a result, no further integration is expected. Low politics is less troublesome in terms of mandatory and enforceable supranational norms (Bieling 2012: 86). Consequently, “the incidence of [robust regulatory frameworks] is correspondingly high”

(Abbott/Snidal 2000: 441). Despite their fears about losing influence and sovereignty, countries appear, however, to recognise that greater cooperation is required to handle current issues. In this perspective, new-intergovernmental governance would be a compromise between loose intergovernmental coordination and supranational competence relinquishing. Empirical findings on energy policy suggest that politicisation and growing awareness of the security implications of energy supply encouraged member states to seek deeper intergovernmental cooperation rather than abandon discretionary powers through harmonisation. Further integration in this way would carry the danger, from a national perspective, of the Commission and European Parliament being engaged in decision-making, which might result in an outcome that jeopardises the interests of individual nation-states (cf. Balzacq 2005.; Buzan et al. 1998; Bieling/Lerch 2012: 68; Bickerton et al. 2015; Krämer 2021*b*; Panić 2009: 31;). Terms such as “embedded intergovernmentalism” (Bocquillon/Maltby 2020) or “procedural supranationalism” (Thaler 2020) have been introduced in this process, though they lack theoretical underpinning and analytical distinctiveness.

Recently, literature on differentiated integration has developed rapidly. In this context, it has been mainly investigated how member states react to exogenous shocks and negotiate opt-outs in vertical and horizontal terms in domains deemed as core state powers. Differentiated *dis*-integration, on the other hand, basically describes “the selective reduction of a state’s level and scope of integration” (Schimmelfennig 2018: 1154), while differentiated integration refers to progressive cooperation at the EU level, which, however, is not undertaken in a confirmatory manner, but instead takes account of national preferences and might be observed already since earliest stages of the European integration process (cf. Stubb 1996: 283f.; Leuffen et al. 2013). So-called “core state powers” are a key concept in the most recent research literature and describe policy fields that may be defined as:

“[...] action resources deriving from the state’s monopoly of legitimate coercion and taxation: military force, police power, border control, public revenue and administrat[ion]” (Genschel/Jachtenfuchs 2018: 181).

Core state powers as an analytical category appear to have great similarities with high politics known from intergovernmentalism. Practically all contributions to this academic discussion, which has gained new momentum with the United Kingdom’s withdrawal from the EU, argue similarly and can now – after many rather descriptive contributions – persuasively account for member state rationales for *dis*-integration. However, because of these *realpolitik* circumstances, the focus has been chiefly on *dis*-integration at the polity level and on explaining how it was possible that Brexiteers won the leave campaign, with little attention paid to

differentiation and dis-integration in specific policy areas (cf. Genschel/Jachtenfuchs 2018; Leruth 2015; Leruth et al. 2019; Morsut/Kruke 2018; Schimmelfennig et al. 2015; Schimmelfennig 2018; Vollaard 2014; 2018). In this respect it is – comparable to new-intergovernmentalism research – mainly argued with the structure of the policy field concerned from a nation-state perspective (high politicisation combined with continued interdependence) rather than with the political process and the power-play between legislative actors.

If one, however, extends the definition of differentiated dis-integration to the policy sphere, dis-integration occurs when "EU policies are transferred back to member states" (Scicluna 2021: 660). In other words, policies and decision-making powers that previously laid at the EU level and gave the individual nation-states no or only limited scope for discretion are re-structured and given back *ad libitum* to national governments. This cannot only be achieved by formally returning competences but also seems to happen by making the formal legal commitment to the sanction-bearing law more flexible. If member states have the freedom to choose whether and how they react and comply with supranational law, this can be seen as a dis-integrating step if the previous policy approach formulated robust and uniform normative commands (cf. *ibid.*; EP 2007; Krämer 2020: 46f.; Přibáň 2010; Repasi 2018). The employment of legal flexibility or soft law techniques, i.e. norms that lack unambiguous legal binding force, must therefore be seen as an integrative step backwards from robust law.

2. Shortcomings of Existing Literature and Academic Relevance

Few contributions have examined how other actors, particularly supranational institutions such as the Commission, strive to address these issues and how national aversion to more integration influences future reform initiatives. While individual scholars have acknowledged a state-centric perspective and admitted a certain bias (Vollaard 2014: 3), the Commission's relationship *vis-à-vis* the co-legislators in this respect is largely unexplored and poorly theorised. This ignores the Commission's critical position as the EU's sole actor with the right of initiative (Art. 17 (2) TEU). It is true that significant contributions, such as Hartlapp's and others' (2010; 2013; 2014), have been ascribed to the Commission's preferences and dispositions for action. However, the emphasis has been on internal processes, with little investigation of the Commission's relationship to other actors in the legislative process or the interests that inspire the Commission to propose policies, particularly in soft governance or even dis-integration. The thesis endeavour attempts to add knowledge to this and, if considered necessary, to supplement existing theoretical assumptions. As a result, a shift in perspective is

proposed that departs from the primary analytical emphasis of the academic discussion, namely the reasons for member states' behaviour. Additionally, it should be noted that unsuccessful reform processes, such as the selected case, are negotiated in the form of a legislative package that permits logrolling (cf. Council 2019: 2). Traditionally, this strategy is expected to avoid deadlocks and ensure quick adoption (cf. Aksoy 2012; Kardasheva 2013: 858ff.; Persson 1994: 222f.;). Given the duration of the previous legislative term, the reverse seems more plausible. Insofar, this well-established premise does not correlate to observed phenomena in the real world, and this widely held opinion in the literature is contested.

	Main Assumption	Blind Spots
Liberal Intergovernmentalism	Domestic conditions determine member states' integration-avoiding behaviour at EU level.	Pure focus on nation-state actors and disregard of structural conditions outside the nation-state system.
New-Intergovernmentalism	The structure of the policy field concerned explains an “integration fatigue” (Puetter 2014: 1), that leads member states to seek European cooperation without further integration.	Underestimating role of other EU actors. Inability to explain steps backwards.
Differentiated (Dis)Integration	Fields belonging to core state powers lead to opt-outs and, where the occasion arises, to an attempt at dis-integrating a member state's scope of integration.	Cannot (yet) explain how supranational actors behave and what motivates them to allow or actively propel dis-integration. Mainly focus on polity and horizontal integration instead of policies.

Figure 1: Overview of relevant research literature and gaps (own representation)

3. Social Relevance

However, the suggested study has not solely academic relevance. Likewise, social significance is derived from the requirement of comprehending how such grave policy issues are to be resolved at the EU level and the efforts taken by the Commission to accomplish it. This is evident because individual member states have increasingly taken unilateral action on such problems in recent years, resulting in open confrontations that threaten the EU's core foundations. Additionally, since 2015, there has been a *de facto* lack of an effective legislative framework capable of adequately addressing violence-induced migration into the CEAS. This highlights the need to study this political and legal evergreen within the EU's governance

system to ascertain the motivations for actors' behaviour and the ramifications for asylum law and policy within the CEAS' geographical scope. Given the current developments in Russia's invasion of Ukraine, which created the largest refugee movements originating from the European continent since the end of the Second World War (UNHCR 2022); because millions of minors, women, and men over 60 are trying to leave the country, it is critical to actively monitor and investigate asylum policy and legal arrangements. Due to a lack of a reliable legislative framework, the EU and its member states are forced to rely on *ad hoc* measures (cf. Krämer 2020). Additionally, "flexible" or soft law approaches have been increasingly popular in recent years, casting doubt on the EU's prior effective integration via law (ibid.: 46f.), and hence legal certainty as well as "the normative legitimacy of the EU's legal order" (Sciicluna 2021: 659) itself.

III. Theoretical Framework

The theoretical framework to be developed hereinafter combines different streams of literature and concentrates on the theory of differentiated dis-integration and non-compliance research applied to the Commission as an actor in the inter-institutional space, which has been mostly "neglected in the empirical [research]" (Burns 2004: 1). A new viewpoint is proposed that complements, narrows, or alters previously held assumptions. This chapter aims to generate empirically testable hypotheses. However, before it is possible to work out the potential costs and benefits of the Commission's behavioural options, which are assumed to shape this supranational actor's behaviour and could provide an explanation for why it formally proposes active steps towards dis-integration, it is first necessary to situate the Commission within the institutional structure and define its role in order to understand related spheres of influences and constraints that determine complex cost-benefit trade-offs.

1. The European Commission and its Role in the EU's Legislative System

The Commission's composition and competences are codified in EU primary law under Article 17 TEU and define its role in the EU's political system. Apart from enforcing EU law, representing the Union externally, executing budgets, and implementing secondary and tertiary legislation (Article 17 (1) TEU), the Commission's primary function is to formally introduce proposals for secondary legislation, such as regulations and directives:

"Union legislative acts may *only* be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide" (Art. 17 (2) TEU; emphasis added).

This gives the Commission *de jure* a monopoly on the initial formulation of legislative proposals, which places it in a unique position within the inter-institutional structure of the Parliament, the Council, and the Commission as the EU's main legislative bodies (Ponzano et al. 2012: 6f.). Therefore, the Commission plays a major role in agenda-setting and theoretically can set the tone for the legislative agenda at the EU level, at least in ordinary day-to-day politics (see long-term political guidelines setting of the European Council according to Art. 15 (1) TEU). Nonetheless, this power of initiative does not exist in a vacuum that can be studied analytically apart from other factors that are likely to limit and complicate its agenda-setting and political guidance capacities significantly. Hence, two critical aspects come into play: inter-institutional bargaining and policy context.

1.1 Inter-institutional Bargaining

Since the introduction of the ordinary legislative procedure, also known as the co-decision process, with the Maastricht Treaty in 1993 and its further development with the Amsterdam Treaty in 1997 (cf. Burns 2004: 2ff.; Ponzano et al. 2012: 37), the institutional structure has shifted and appears to have affected the Commission's power position remarkably. Whereas it was previously sufficient for the Council and the Commission to reach an agreement as the Parliament had a merely consultative function, the establishment of the co-decision procedure has placed Parliament and Council on an equal legal footing, and a majority vote in favour of a legal initiative on both sides is required for secondary legislation to be successfully adopted (Art. 294 TFEU; Burns 2004: 2ff.). The ordinary legislative procedure, in which the Parliament plays an equal role, has become the standard (cf. Arndt et al. 2015: 62) and is likewise provided for in the CEAS policy sector under study.

With the Treaty of Amsterdam, the legislative competence in such a sovereignty-sensitive policy field was transferred for the first time in legal history to a supranational organisation by transferring the field of migration and asylum from the Third intergovernmental Pillar to the First Pillar of the EU's political system (cf. Breitenmoser 2017: 32). Based on this "communitarisation of asylum policy" (Filzwieser/Sprung 2010: 24; translation from German; DK), the European Council in Tampere in 1999 (EP 1999) and the Hague Programme in 2004 were adopted (cf. Hatton 2005: 109ff.; Höllmann 2014: 72ff.). With the ratification of the Treaty of Lisbon in 2007 and the foundation of the EU's present treaty framework, the Hague Programme's objectives were ultimately implemented in formal law, and the CEAS was

established. It was conceivable to agree on a co-legislative procedure for this field (cf. Perrin/McNamara 2013: 11).

The result of this decision is a substantial restriction of the right of initiative. Although the Commission has still a *de jure* monopoly on legislative initiatives, it is *de facto* significantly constrained by increased complexity as a result of the growth in the number of actors with voting rights and thus veto power:

“Over the years, the power to co-legislate, shared by the European Parliament and the Council, and the related practice involving talks between the representatives of the co-legislators, has *de facto* impacted upon the monopoly of the legislative initiative of the Commission” (Ponzano et al. 2012: 37; emphasis added).

The reason for this is that the Commission, by exercising its policy formulation function, must take care to consider the diverging and, depending on the policy field, changing interests of both actors when formulating proposals for regulations or directives in order to be able to achieve adoption. As will be explained in more detail below, the interests of both actors diverge considerably, especially in sovereignty-sensitive issues. While member states are keen to maintain their competences, the Parliament, as a supranational actor, naturally pursues an approach that tends towards more harmonisation and supranationalisation (cf. Arregui 2016; Bieling/Lerch 2012). This “heterogeneity of actor’s interest [is] a major constraint” (Hartlapp et al. 2014: 9) for the Commission. Consequently, the Commission’s understanding has also evolved away from a mere initiator to an honest broker between the two co-legislators, as a joint statement by the presidents of all three pertinent institutions clarifies:

“The Commission [...] shall exercise its right of initiative in a constructive manner with a view to reconciling the positions of the European Parliament and the Council” (OJEU 2007: 6).

This situation “adversely impacts the autonomous exercise of the power of initiative” (Ponzano et al. 2012: 37) and forces the Commission to anticipate the positions of the co-legislators to make proposals that are actually feasible for a (timely) adoption (Hartlapp et al. 2014: 22ff., 264ff.) and ultimately proper implementation. It is, therefore, necessary to reconcile the interests and respond to the demands of the Parliament and the Council, and at the same time, ensure that the potential outcome still complies with own preferences (cf. Burns 2004: 15):

“To sum up, the introduction of the codecision procedure in the EU decision-making and the functioning in practice of the inter-institutional system have transformed the role of the Commission from that of an autonomous initiator to that of a reactive initiator” (Ponzano et al. 2012: Executive Summary).

It is assumed that the Commission is by no means an ideology-free, apolitical actor consisting of technocrats. It rather acts politically, has its own structurally determined interests to increase competence and pursues its own agenda, which may be fed by self-interest and/or normative attitudes (Hartlapp et al. 2012), as empirical findings have suggested that contradict with the still widespread underestimation of the Commission's political role (cf. Krämer 2020). From a rational-choice premise, it is reasonable to expect that the Commission accepts costs because it believes that the proposed policy is preferable to the alternatives. Rationalists presume that risk-averse actors accord with pre-determined interests. The advantages and disadvantages of a course of action are weighed against one another, and the most beneficial course of action is chosen (cf. Hopf 1998: 174ff.; Keck 1997: 140; Lipson 1999: 501; Trubek et al. 2005: 8f.). Therefore, it is expected that the Commission would carefully weighs costs and advantages when using its right to initiative.

1.2 Context Matters: The Commission and the Policy Cycle

The Commission's behavioural dispositions are not only limited and determined by the fact that it needs to anticipate the positions of the other actors involved but are also dependent on the political context, which has been largely neglected in previous research. However, this context plays a major role in the case of the Commission and could be a main explanatory factor, as the Commission is situated at the beginning of the policy cycle through its right of initiative (Figure 2).

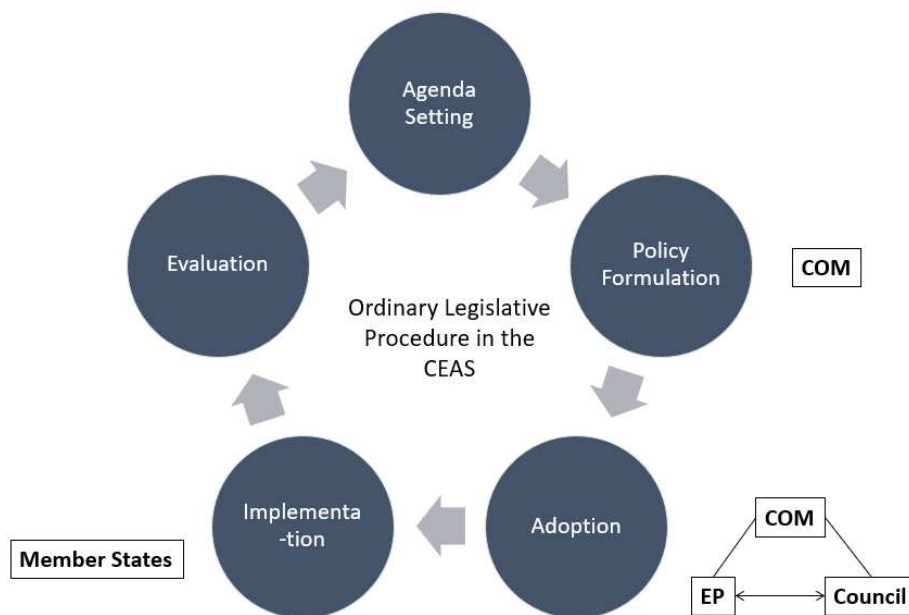


Figure 2: The policy cycle and relevant actors for each legislative step within the CEAS' co-decision procedure, in which the Commission is embedded (own, highly simplified overview based on Knill/Tolsun 2008: 13ff.)

Accordingly, the formulation of policies is not simply an unbound process but is somewhat related to experiences from previous cycles that a policy usually goes through. In other words, an actor who is entitled to make policy proposals must consider and incorporate the previous historical process in this policy field. For instance, if problems have arisen in policy implementation previously, this should be reflected in the revision of a policy. This may also be referred to as path dependence, as known from integration theory, which describes the idea that future decisions are contingent on prior events. It is often referred to as “institutional stickiness” (Correljé et al. 2013: 5; Pierson 2000; Schubert/Klein 2018: 170). Without “exogenous shocks” (ibid.: 4), it is unlikely to push through large-scale reform projects in a deliberative process since too many interests influence political decisions. This is compounded by the politicisation of policy domains, which includes high costs, and actors will thus be careful about the future design of policies in a too rapid fashion without ensuring the impacts of particular policies through a feedback loop (Easton 1965: 32ff.; Pierson 2000). In this respect, the process-oriented notion of the policy cycle suggests:

“[...] that the content of policy, particularly in the case of contentious decisions, is derived from the policy cycle itself” (Everett 2003: 65).

Even if the policy cycle is too simplistic as an explanatory model, it offers the possibility of structuring theoretical assumptions analytically and the inclusion of a contextual, holistic perspective of the power plays between the institutions, to which the Commission must subjugate itself at least partially through reaction (ibid.: 66, 70). Thus, this perspective offers to develop a more sophisticated analytical framework in fields where

“[...] the policy content and the process of decision-making [is] the outcome of ‘a play of power’ which proceeds by interaction and a series of negotiating steps between groups using a variety of resources and techniques in order to reach a solution” (ibid.: 66).

It can therefore be assumed that due to its positioning in the policy cycle (Figure 3), the Commission must not only consider the feasibility of policies in a forward-looking manner but must also take into account the accumulated lessons learned from previous experiences, which in turn are reflected in the Commission’s behavioural dispositions in proposing pending reforms.



Figure 3: Visualisation of the Commission's required contextual considerations (own representation)

From these observations, various costs and benefits arise concerning a “flexible” and thus dis-integrative policy approach, as proposed in the CEAS reform, and are influenced by the specific role of the Commission in the EU’s legal system. It is therefore assumed:

[H₁] The Commission makes its proposed CEAS reform ex-ante and ex-post dependent on the co-legislators, Parliament and Council.

2. The Commission’s Considerations

This chapter explains – structured according to the pertinent steps of the policy cycle – the costs and benefits that may play a role for the Commission’s considerations for actively proposing dis-integrating steps through the introduction of legal flexibility. The following factors seem pertinent to this work; they are inextricably linked and are only separated for analytical purposes.

2.1 Policy Adoption

Rationalistically, the proposal for a regulation that is accepted by the co-legislators and has the possibility of a proper and timely adoption by a majority within the respective collective actors is to be chosen from the Commission’s perspective.

2.1.1 Member State’s Sovereignty Concerns

Although the Commission does not have sovereignty concerns due to its supranational competence-seeking identity, it must address possible sovereignty costs incurred by member states, as their assent is required through the Council in the ordinary legislative procedure. It may be theorised that the aforementioned conception of core state powers plays an essential role in the Commission’s considerations. Robust uniform regulatory frameworks that do not allow for any differentiation or flexibility at the vertical level and impose legal obligations on every member state, in the same manner, deprive national actors of their own discretionary leeway and thus lead to costs for the exercise of national sovereignty. However, these expenses are not only determined by the kind of the selected instrument of uniform cooperation (for example, a regulation). Above all, it is the policy domain that, by its very nature, poses the risk of excessive or unforeseen sovereignty costs (cf. Abbott/Snidal 2000: 440). Sovereignty has two central elements that must be considered. On the one hand, internal sovereignty refers to a state authority’s complete exercise of sovereign powers within the state’s frontiers (cf. Schubert/Klein 2018: 305). On the other hand, external sovereignty refers to states' total

autonomy and equality as a primary principle under international law (*ibid.*). Thus, the control over who is entering and residing on national territory and needs to be integrated into a national society triggers potentially high costs:

“Sovereignty costs are at their highest when international arrangements impinge on the relations between a state and its citizens or territory, the traditional hallmarks of (Westphalian) sovereignty” (Abbott/Snidal 2000: 440).

This connection between a state and its population (internal sovereignty) or territorial integrity (external sovereignty) is most impacted in areas of core state powers, to which any type of migration belongs, and leads to a high degree of politicisation (*cf.* Bieling 2012: 86). Therefore, member states are less likely to agree to robust legal frameworks and strong integration if it touches the core of national identity that domestic actors strive to preserve (*cf.* Leruth et al. 2019; Schimmelfennig et al. 2015). A legal softening of integration in vertical terms could therefore become necessary in order to be able to achieve revisions.

2.1.2 Bargaining Costs

Since the Commission has to anticipate member states' sovereignty interests and related concerns for integration to be successful, the sovereignty costs mentioned above are closely interlinked with bargaining costs. In general, costs are incurred when complex and stagnating negotiations lead to a deadlock, the political reputation of the actors involved suffers as a consequence of dissents, or the necessary reform is delayed or even fails to be passed before the end of the legislative period and thus the advent of parliamentary discontinuity due to the complexity and length of protracted negotiations (*cf.* Abbott/Snidal 2000: 435f.; Trubek et al. 2005: 11f.). These expenses can be aggravated, particularly in the event of package deals, when logrolling and other concessions are negotiated across legislative acts (*cf.* dissenting: Kardasheva 2013). For this reason, it could *prima facie* be assumed that negotiation costs could be avoided by anticipating sovereignty concerns.

This assumption, however, does not do credit to the complexity of the institutional framework wherein the Commission and the ordinary legislative procedure operate. As the sole actor with the right of initiative in the EU legislative system, the Commission is expected to consider not only member states' and, therefore, Council's interests but also those *vis-à-vis* the Parliament, which must provide its consent by a majority vote in the plenary. Comparable to the Commission appears the Parliament to be likewise a supranational actor with a competence-seeking identity that naturally sought rather robust legal frameworks and (ambitious)

progressive harmonisation (cf. Arregui 2016). Dis-integration, in this regard, stays in stark contrast to the Parliament's goal as it is likely to reduce its scope of influence. As a result, the apparent advantage of rapid adoption motivated by national interest considerations is virtually diminished. Nonetheless, empirical studies on bargaining satisfaction and analysis of prior deadlocks (ibid.; Repasi 2018, 2019) indicate that the Parliament is willing to make much more concessions and accept lesser increments if they do not result in full dis-integration or absent harmonisation. Hence, it is more important to the Parliament that issues are solved within the EU's institutional setting in order for it to have any influence. Thus, the Commission might give greater weight to national interests when reconciling co-legislators' preferences.

2.1.3 Swiftiness and Strategic Forecasting

Furthermore, a more flexible approach that is likely to prevent a severe deadlock in the informal trilogue negotiations between Commission, Parliament, and Council that has the potential to paralyse the whole legislative process of a big package of secondary acts would prevent the situation of a *de facto* absence of any functioning legal framework. Although it would constitute a certain degree of dis-integration by deviating from the established practice of robust uniform legality, it would reduce costs for the Commission because it could reach swiftly an agreement that makes it obsolete to rely further on malfunctioning *ad hoc* measures or soft law that are dependent of the member state's goodwill. In this regard, a more flexible and transitionally dis-integrative approach would be preferable, as it would reinstate control to the Commission, which can at the very least monitor and forecast how each member state responds. Second, it is likely more expedient to build progressively on an imperfect harmonisation or strategically take a step back through dis-integration to assuage member states' contentious divisions. Thus, the legislative act may be preparatory, educating political actors about the objectives being pursued and fostering trust to re-reach a robust framework in the future (cf. Krämer 2020).

Considering these costs and benefits for a policy adoption, it can be hypothesised:

[H₂] Based on the costs and benefits for the policy adoption, the Commission considers the proposed regulation a more favourable alternative.

2.2 Policy Implementation

A flexible policy approach that deliberately reduces previous integration steps could be a strategy to counter continued or feared non-compliance in the (national) implementation of legal obligations.

2.2.1 Costs of Non-Compliance

Non-compliance research generally assumes that when politicisation and interdependence are high, and especially when cost-increasing re-distributive implications are included, as is the case with refugee acquisition, there is a high likelihood of member states' engaging in conscious non-compliance to avoid these very costs (cf. Dawson 2020; Falkner/Treib 2008: 294f.):

“a combination of high interdependence and high politicisation may lead to either [differentiated integration] or wilful non-compliance” (Scicluna 2021: 661).

As a result, if differentiated but progressive integration cannot be achieved, the only remaining option to address this issue is to engage in controlled differentiated dis-integration by softening a legal framework favouring fewer restraints and increased choice. Otherwise, it risks conscious non-compliance and an open legal and political crisis.

Moreover, research on Latin American countries' compliance with international public law on human rights indicated that, contrary to popular belief, a greater degree of legal obligation, does not necessarily imply a greater likelihood of compliance (cf. Lutz/Sikkink 2000: 654ff.). Thus, from the perspective of the Commission, controlled dis-integration could be a viable middle way. The reason for this lies in a characteristic inherent to most international organisations, namely that neither the Commission nor the EU as such have effective capacities to truly sanction, hence preventing non-compliance by making it costly (cf. Scicluna 2021: 657). Even rulings of the ECJ lack practical enforceability, as the recent disputes between the Commission and Poland about the rule of law, have shown (cf. COM 2016; 2017; 2020a). Consequently, dis-integrative flexibility appears to be a credible alternative to the uncoordinated loss of control produced by national non-compliance, in the Commission's viewpoint. A constraining framework allowing several alternatives for the addressees of a policy may mitigate full deviation from the actual objectives. Thus, flexibility may constitute a coping mechanism for non-compliance.

2.2.2 *Free-Rider Problem*

Nevertheless, flexibility has not only advantages as it reduces the likelihood of wilful non-compliance that might damage people's trust in the EU. There is also a flip side to the coin, namely in terms of possible expenses associated with the selected approach: Belated softening of previously robust legislation may result in legal fragmentation, which is feared by a substantial portion of the literature, as already mentioned. There is a possibility that the redistribution of violence-induced migration will fail since all member states – who are likewise cost-averse actors – will have no valid reason or incentive to accept the more expensive admission of refugees over the alternative options supplied by the Commission (cf. Grossmann/Hart 1980). In other words, the flexible approach increases the likelihood of free-riders and thus might jeopardise the Commission's policy objectives.

Based on these considerations, the third hypothesis regarding the policy implementation step states:

[H₃] The proposed mechanism's flexibility is an attempt by the Commission to increase compliance by member states through choice.

IV. Research Design and Methodology

To address the posed question(s), the research project will conduct a qualitative single-case study, a key design of small-N research in the social sciences (cf. Blatter et al. 2018: 174; Flick 2009: 184). Case studies can be defined as

"[...] an empirical inquiry that investigates a contemporary phenomenon (the 'case') within its real-life context, especially when the boundaries between phenomenon and context may not be clearly evident" (Yin 2014: 16).

The chosen research design may be utilised to pursue manifold objectives, most notably the theoretical explanation of empirical phenomena, which is the thesis' purpose. This design has shown to be particularly useful for examining political processes or developments (politics; in this case: bargaining and implementation issues) and outcomes (policy; in this case: regulation proposal) in a particular policy field (cf. Anastas 1999: 94; Blatter et al. 2018: 268; Yin 2014: 9ff.). Small-N designs are well-suited for this approach because they enable the development of a thorough knowledge while concentrating on a small number of subjects (cf. Gerring 2007: 38f.). The findings of this case study may thus serve as a baseline for future research to see if the trends identified can be generalised to other scenarios, policy fields, and supranational

institutions' behaviour in general. According to the study purpose, the specific policy proposal may be classified as a so-called "critical case" (Yin 2014: 51):

"[Such a case is] in no way statistically representative or 'ordinary'. In contrast, [it is] selected [...] because of the opportunity [it] afford[s] for the examination of theory." (Anastas 1999: 101).

Therefore, this design appears to be well-suited to the research objective, as it will be analysed how the choice of dis-integrative legal flexibility may be explained utilising the combined theoretical approach chosen. To undertake such deductive research, it is first necessary to develop tangible expectations in the form of hypotheses from abstract theoretical considerations. Thus, the research question must be translated into testable statements (cf. Rowley 2002: 19). This has already been completed as initial work employing the state of the field on differentiated dis-integration and non-compliance literature while considering the Commission's distinctive features ([Chapter III](#)). Single-case studies necessitate a conscious and purposeful case selection since they are the sole unit researched (cf. Ritchie et al. 2013: 51f.).

1. Case Selection

The Asylum and Migration Management Regulation initiative was chosen for three reasons: First, the CEAS is a policy area undoubtedly belonging to core state powers where dis-integration is most likely to occur. For years it seems to have been the most controversial and volatile EU field, in the context of which there have been numerous failed reforms and open confrontations between EU institutions and member states. Second, it appears to be the first time that the Commission has actively proposed dis-integrating steps through legal flexibility. While there has been increased *ad hoc* use of soft law in the past, the Commission has never attempted to transpose this into a regulation. Third, the geopolitical circumstances and the millions of refugees associated with them make it necessary to analyse the pertinent policy designs critically.

2. Methodological Approach: Qualitative Content Analysis

A qualitative content analysis (cf. Mayring 2000, 2014; Schreier 2012) will be conducted, examining the Commission's considerations in-depth. The objective is to apply the selected approach to interpretively illuminate the Commission's reasonings by coding and assigning them interpretatively to pre-determined categories. While the research design is deductive in nature, as stated, the coding process will employ an abductive logic. Qualitative content analyses enable relatively flexible data analyses, making them applicable for abduction. While

the analysis is primarily concerned with hypotheses derived from theory, the addition of abductive elements as a "third way" (Rinehart 2021: 5) between the classical inductive, that is, theory-developing, and the described deductive logic

"suggest[s] [...] analysis as a back and forth process between the research evidence and considerations of theory" (ibid.).

This innovative third way is chosen because existing theoretical assumptions are to be adapted and examined in a new focus on the Commission. Abduction helps to inductively complement existing categories where necessary and thus allows an adequate understanding and explanation of the behavioural patterns of an actor whose structural features have been so far insufficiently addressed.

3. Data

The selected empirical material to be coded consists of three types of primary sources:

1. The main material analysed will be sources authored by the European Commission which explain the reform proposal that can provide information on the underlying intentions. These include the proposed regulation itself, official communications and working documents.
2. Documents related to the reform and produced by the co-legislators or member states are supplementarily analysed. As theoretically expected, their interests play a significant role in the Commission's policy formulation.
3. Other primary sources that contain the Commission's considerations or from which these can be extracted are coded.

The main empirical material is retrieved *inter alia* from the [EUR-Lex](#) and [iPEX](#) databases, which provide official EU legal and policy documentation. A complete list of all coded documents and the coding tables themselves may be consulted in the [appendix](#).

Additionally, sources are considered that may contradict own theoretical assumptions and result in an unanticipated outcome that cannot or only partially be explained by the chosen theoretical framework. This avoidance of a confirmation bias is a critical quality criterion of empirical research (cf. Anastas 1999: 96; Rowley 2002: 20ff.). Not only does the chosen design have advantages for the specified research goal, but it also has limitations that must be acknowledged. No generalisation based on statistical quality standards may be drawn from the

case study results, as they are not a statistical test of a theory (ibid.), in which, for instance, additional intervening variables are calculated. According to the stated objective, it can only contribute to an interpretative understanding of the underlying theory and determine its suitability for explaining the Commission's new and counterintuitive behaviour.

V. Analysis

Before the content analysis' results can be presented and critically discussed, it is necessary to provide a brief overview of the Commission's regulation proposal and its flexible solidarity mechanism. Providing such contextual information is imperative to allow for a holistic and in-depth understanding of the subject being studied within case studies (cf. Anastas 1999: 96).

1. Contextualisation: The Asylum and Migration Management Regulation Proposal

The Asylum and Migration Management Regulation is intended to replace the Dublin system, which failed following the so-called "refugee crisis". This system is based on the so-called Dublin-III-Regulation, enacted to achieve a better-coordinated response to asylum issues (cf. Filzwieser/Sprung 2010: 23). The Dublin system determines which member state is responsible for a particular asylum claimant. With the introduction of this system, it was established that an individual seeking international protection must always have his or her asylum application processed by a single clearly designated member state (Art. 1 Dublin-III-Regulation). In general, the member state responsible is the one via whose borders the refugee entered the EU irregularly, unless other factors, such as the location of the nuclear family, take precedence (cf. Dolk 2011: 4). The Dublin-III-Regulation was a completely harmonising legislation that bound all member states uniformly. However, this policy has resulted in member states along the EU's southern and southeast external borders bearing a disproportionately high cost because of the large migratory influx from Africa and the Middle East (cf. Bojadijev/Mezzadra 2015). There is no system for burden-sharing – even in times of crisis, as foreseen in Art. 78 (3) and 222 TFEU. When the number of refugees ultimately leaped in 2015, owing mainly to the devastation caused by the Syrian Civil War, the entire system imploded. The member states involved were unable to care for all migrants and were forced to allow them to continue their journey unregistered to other EU countries (cf. Maiani 2017: 625ff.; Weber 2016: 17f.).

To address this policy failure and to stop relying on subsequent malfunctioning *ad hoc* relocation measures, which have only provided short-term solutions, the Juncker Commission had envisaged a regulation for binding redistribution keys for migrants as foreseen in EU

primary law as an expression of re-distributive solidarity (cf. Art. 80 TFEU; Hiplod 2016: 391; Klamert 2014: 28f.). However, the associated legislative package, like the malfunctioning *ad hoc* measures, failed savagely and has:

“show[n] the limits of [the Commission] in taking supranational decisions without the unanimous binding support of the Member States. The 2015 events illustrated the gap that still exists between the need for supranational initiatives to solve complex, transboundary challenges and the Member State’s sovereignty” (Morsut/Kruke 2018: 156)

The von der Leyen Commission, therefore, appears to be pursuing a completely different approach: The new initiative gives the "possibility for Member States to choose" (COM 2020c: 18) their kind of contribution from three options (Figure 4) and hence implements "flexible solidarity" (Dimitriadi 2020: 7). Although, according to Art. 80 TFEU in conjunction with Art. 77-79 TFEU, it is conceivable to develop a robust relocation mechanism, as intended in the Juncker plan, in which individuals are allocated across member states using a fixed key (cf. EPRS 2020: 4); the current Commission opts for a flexible approach (Krämer 2021a). This not only deprives the Commission itself of considerable influence and results in a loss of predictability over the member states’ behaviour but also represents dis-integration, as previous although malfunctioning integration through uniform law is to be replaced by soft governance and legal flexibility.

Relocation (Option 1)	“Return Sponsorship” (Option 2)	Capacity building and operational support (Option 3)
<p><u>Provision in the draft:</u> Art. 45 (1) lit. a, c Regulation Proposal</p> <p><u>Explanation:</u> Participation in relocation of refugees based on a distribution key (Art. 45 (1) lit. a, c Regulation Proposal; Carrera 2021: 10).</p>	<p><u>Provision in the draft:</u> Art. 45 (1) lit. b; Art. 55 Regulation Proposal</p> <p><u>Explanation:</u> Supporting another member state affected by migratory pressure by carrying out expulsions of illegally staying third-country nationals (cf. Art. 55 (1) Regulation Proposal).</p>	<p><u>Provision in the draft:</u> Art. 45 (1) lit. d; Art. 49 Regulation Proposal</p> <p><u>Explanation:</u> Support for affected member states in close consultation with the Commission's situational assessment. No precise information (cf. Art. 49 Regulation Proposal; Carrera 2021: 10f.).</p>

Figure 4: Overview of the flexible solidarity mechanism as proposed by the Commission (own, slightly adapted representation from Krämer 2021a: 9).

Critics fear that solidarity cannot be achieved with this proposal and that fragmentation and softening of EU law could ensue. After all, solidarity "is a legal obligation" (Dimitradi 2020:

7) and is inextricably linked to burden-sharing (ibid.; ECJ 2019). Additionally exacerbated by crisis situations, which were not ruled out at that time given the escalating conflict in Syria and tense relations with Turkey (cf. EPRS 2020: 7; de la Baume/Eder 2021), but nowadays becoming abundantly clear following the large-scale invasion of Ukraine and the suffering associated with it triggering large refugee movements. However, a legal evaluation or impact assessment is omitted. The thesis aims to explain why the Commission submitted this counterintuitively self-cutting and dis-integrating proposal and not a normative or legal evaluation.

2. Discussion of Findings

The results of the conducted qualitative content analysis to reveal the Commission's considerations through interpreting pertinent primary sources are presented hereinafter. For better comprehensibility, the discussion of findings follows the pre-defined order resulting from the theoretical framework and the policy cycle. The findings suggest that the Commission's considerations largely align with theoretical expectations. However, regarding the first hypothesis, a more extended and revised theoretical approach is required.

2.1 Addressing Co-Legislators' Interests

According to the first hypothesis, the Commission's reflections should contain indications of the consideration of the interests of the member states or the Council as the EU body representing them, as well as those of the Parliament in a retrospective and future-oriented manner. Examining the Asylum and Migration Management Regulation proposal in which the Commission justifies its approach, it is noticeable that it considers both the adoption and implementation (A1, A2) of the regulation and provides corresponding arguments for the formulation of this policy. From a purely numerical perspective (Figure 5), it is relatively apparent that the Commission addresses the interests of the member states, respectively, the Council most frequently (A1.1, A2.5). This concerns both the adoption and implementation steps as the two sub-categories with the most coded segments deal with nation-states' positions and interests for each step of the policy cycle.

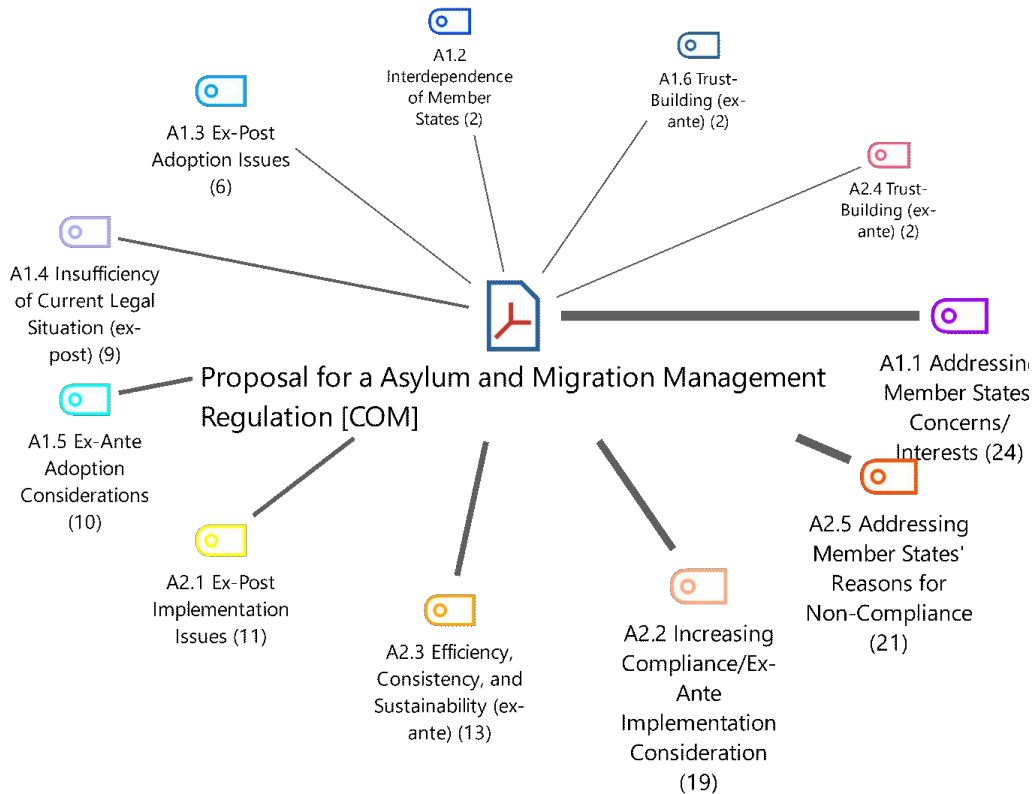


Figure 5: Frequency of Coded Segments within the Proposal with their respective Categories (own representation).

For the Parliament, no such indications could be found in the actual proposal, even though the Parliament is a co-legislator with equal formal powers in this instance. Suppose one, however, compares all three main documents in which the Commission justifies its policy formulation. In that case, there are isolated acknowledgements of the interests of the Parliament, but only reference is made to the fact that there is an exchange and close coordination with the directly elected representation of all EU citizens (A1.7; Figure 6). Nevertheless, the explanatory memorandum to the regulation does not go into detail about the Parliament's substantive expectations, even though it had already formulated precise positions for a reform of relocation and burden-sharing in the area of violence-induced migration at an early stage (C1, C2, D3). Although the theory supports less attention to the Parliament, since this actor is willing to make significantly more concessions and does not have to participate in the implementation of the regulation, it seems surprising how little awareness is devoted to the Parliament's positions at this point. Nonetheless, a possible explanation can be found in the in-depth interpretation of the Commission's arguments hereafter and the consultation of the supplementary analysis' findings of documents from the member states and the Council (Coding Table B). Generally, it can be stated that the Commission is basing its proposal to a large extent on positions taken by the co-legislators, and thus their dispositions constitute a valuable explanatory variable for the

regulation's flexible solidarity mechanism. However, the first hypothesis cannot adequately explain the large disregard of the Parliament's position.

	Commission Staff Working Document [COM]	Proposal for a Asylum and Migration Management Regulation [COM]	New Pact on Migration and Asylum [COM]	Σ
A1 Policy Adoption				
A1.1 Addressing Member States' Concerns/Interests	16	24	7	47
A1.2 Interdependence of Member States	0	2	5	7
A1.3 Ex-Post Adoption Issues	7	6	2	15
A1.4 Insufficiency of Current Legal Situation (ex-post)	12	9	4	25
A1.5 Ex-Ante Adoption Considerations	11	10	6	27
A1.6 Trust-Building (ex-ante)	1	2	4	7
A1.7 Addressing Parliament's Interests	4	0	2	6
A2 Policy Implementation				
A2.1 Ex-Post Implementation Issues	20	11	10	41
A2.2 Increasing Compliance/Ex-Ante Implementation Consideration	9	19	12	40
A2.3 Efficiency, Consistency, and Sustainability (ex-ante)	6	13	11	30
A2.4 Trust-Building (ex-ante)	1	2	3	6
A2.5 Addressing Member States' Reasons for Non-Compliance	25	21	7	53

Figure 6: Cross-tabulation with Number of Coded Segments per Sub-category of Coding Table A (own representation)

2.2 Designing an Adoptable Regulatory Framework

With the adoption of such a major reform, complex cost-benefit trade-offs are expected. The second hypothesis states for this policy step that the Commission, despite all the costs associated with the proposal, considers the costs of non-adoption to be higher and therefore, the policy design presented could be a more favourable alternative. The Commission makes elaborate remarks about the inadequacy of the past and present legal situation and points to problems in the legislative process before arguing, based on this assessment, how lessons can be learned for this legislature:

“Another structural weakness of the Common European Asylum System (CEAS) is the absence of a functioning system for the fair sharing of responsibility among Member States. The current Dublin system is not aimed at ensuring the fair sharing of responsibility, but rather at objectively allocating the responsibility to examine an application for international protection to a specific Member State” (COM 2020d: 22)

As described above, the previous legal framework has failed owing to strong migratory inflows and has proven unable to deal with pressure caused by external events. As a result, the Commission contends that the current legal situation is insufficient and that existing practices must be revised (A1.4, D1), as they are barely harmonised and frequently "abused" (ibid.). Particularly,

"relocation efforts [in the wake of the failure of the Dublin system] have revealed several difficulties with [...] ad hoc and temporary formats of cooperation, with sometimes prolonged periods [...] to find agreements to allow for disembarkation, and with only relatively few Member States contributing to relocation." (ibid.: 7).

Therefore, the Commission – like most of the literature – concludes that "[t]he current migration system is insufficient in addressing these realities" (COM 2020c: 1). In this respect, a revision attempt is based on an *ex-post* evaluation of previous difficulties (see also H₁). Nevertheless, this *ex-post* review goes beyond a purely legal contemplation and addresses adoption issues of the past and is reflected in *ex-ante* design considerations that are supposed to allow for a swift and cost-efficient adoption (A1.5, A1.6).

Theoretically, it has been expected in the second hypothesis that the Commission will have to address sovereignty interests of the member states, because associated political volatility combined with a high degree of interdependence has been shown to be an obstacle to robust regulatory frameworks, according to valuable research results from differentiated (dis-)integration and new-intergovernmentalism scholars. Additionally, this combination appears to increase the likelihood of non-compliance. Thus, in order to find a political solution and lower the threshold for adoption in the legislative process, the Commission would need to address these issues (see H₂). Acknowledging this, the Commission, in the explanatory memorandum of the new flexible solidarity mechanism, points out that the new approach leaves open the possibility for member states to choose, at their own discretion, the form of contribution they prefer. In this way, concerns with re-distributive implications in the area of core state powers are addressed (A1.1, A1.5, A2.2, A2.5, B1.1, B1.2, B2.1). At the same time, however, it also points to the high degree of interdependence that goes hand in hand with the transnational phenomenon of violence-induced migration and therefore necessitates cooperation at the

European level (A1.2). The old approach to reforming the Dublin-III-Regulation, similar to the failed system, was a robust, uniform legal framework. In retrospect, this approach failed because the concerns of the member states described above were inadequately addressed, resulting in a complete deadlock:

“On the legislative side, negotiations on the 2016 CEAS proposals did not lead to an agreement among Member States, in particular *due to divisions on the issue of compulsory relocation* of applicants for international protection, which continues to be a bone of contention in the context of consultations with Member States on the New Pact on Asylum and Migration. *Finding an agreement among Member States is therefore key for a more effective management of migration*” (COM 2020d: 51, emphases added)

This also explains the stronger focus on the needs of the member states. They are not only responsible for the implementation but were also the reason that the previous negotiations failed within the Council (see H₁).

The bargaining costs and policy problems associated with this deadlock, which remain unresolved, have led the Commission to withdraw the old reform proposal and replace it with a new one designed to provide a "fresh start" (COM 2020b: 1):

“With a view to overcome the current deadlock and provide a wider and solid framework for the migration and asylum policies, the Commission intends to withdraw the 2016 proposal” (COM 2020c: 4).

Based on this experience, several consultations would be made for this new start, which did take into account the concerns of the member states in particular. Therefore the robust approach is sacrificed in favour of legal flexibility, as the Commission considers this approach better than having to rely on the *ad hoc* measures that have been declared insufficient as it would allow to actually overcome the sustainable standstill and reach an adoption because the Council continues to refuse to see legal obligations depriving of the solidarity principle in Art. 80 TFEU (cf. Council 2014; A1.3, A1.5):

“The overall contribution of each Member State to the solidarity pool should be determined through indications by Member States of the measures by which they *wish* to contribute” (COM 2020c: Recital 22; emphasis added).

Nevertheless, the supplementary analysis of reasoned opinions of various national parliaments on the draft regulation has revealed the member states' very asymmetrical interest situation (B1, B2, D2). Hungary, for example, which, together with other member states from the *Visegrád* Group, appears to be one of the most vocal opponents of refugee relocation, even sees this flexible approach as a violation of the principle of subsidiarity and thus of national sovereignty.

However, geographically peripheral states that have been particularly affected by migratory pressure from the Middle East and Africa would like to see a more robust enforcement of burden-sharing. In this respect, the Commission seems to be following the lead of those who would rather dis-integrate. Therefore, the conflict of interests within the Council is resolved in favour of the opponents of continued uniform and robust legal integration (D1).

Furthermore, the package deal approach of the past policy cycle seems to have made reforms more difficult and prevented other legislative projects:

“Whereas significant progress was made on a number of these proposals, and provisional political agreements were reached between the co-legislators [on five proposals] less progress was achieved on the proposals for the Dublin Regulation and the Asylum Procedure Regulation, mainly due to diverging views in the Council. There was also not sufficient support for agreeing on only some of the asylum reform proposals ahead of an agreement on the full reform” (COM 2020c: 3)

In this respect, this observation and assessment contradict the literature, which expects package deals to have the exact opposite effect. The reasons for this may be that actually uncontroversial aspects of a legislative package are misused to exert political pressure and increase both political and negotiating costs for other actors in order to be able to push through one's own position in a controversial case (see also: logrolling).

2.3 Increasing Compliance

It is reasonable to assume – as in hypothesis three – that the Commission's proposed policy is intended to address persistent non-compliance with relocation measures. Considering the experiences of the last term, it is undeniable that the Commission's attempt to achieve a comprehensive and legally obligatory relocation of asylum seekers through *ad hoc* measures failed. As a result of member states' insistence on voluntary initiatives, the total number of refugees re-distributed fell well short of the Commission's expectations. Because of the obstructionist stance of some national governments inside the Council, the legislative process has virtually stalled. This exacerbates the previously indicated policy concerns and paralyses the entire legislative process around the package deal. Given the likelihood that non-compliance with *ad hoc* measures will erode the Commission's authority over time, it is plausible to assume that the current "flexible" approach, which allows member states to choose the type of contribution they will make, is an effort to prevent this deliberate non-compliance (see H₃).

Based on the overlap and interconnectivity of the policy steps, since both are prerequisites for a successful policy change and are thus an inseparable part of the Commission's considerations, it is also evident from the overlays of coded segments assigned to the respective categories of Coding Table A (Figure 7) that the arguments mentioned are closely interconnected and that only the Commission's implementation-specific considerations are addressed here for analytical simplicity and to avoid redundancy.

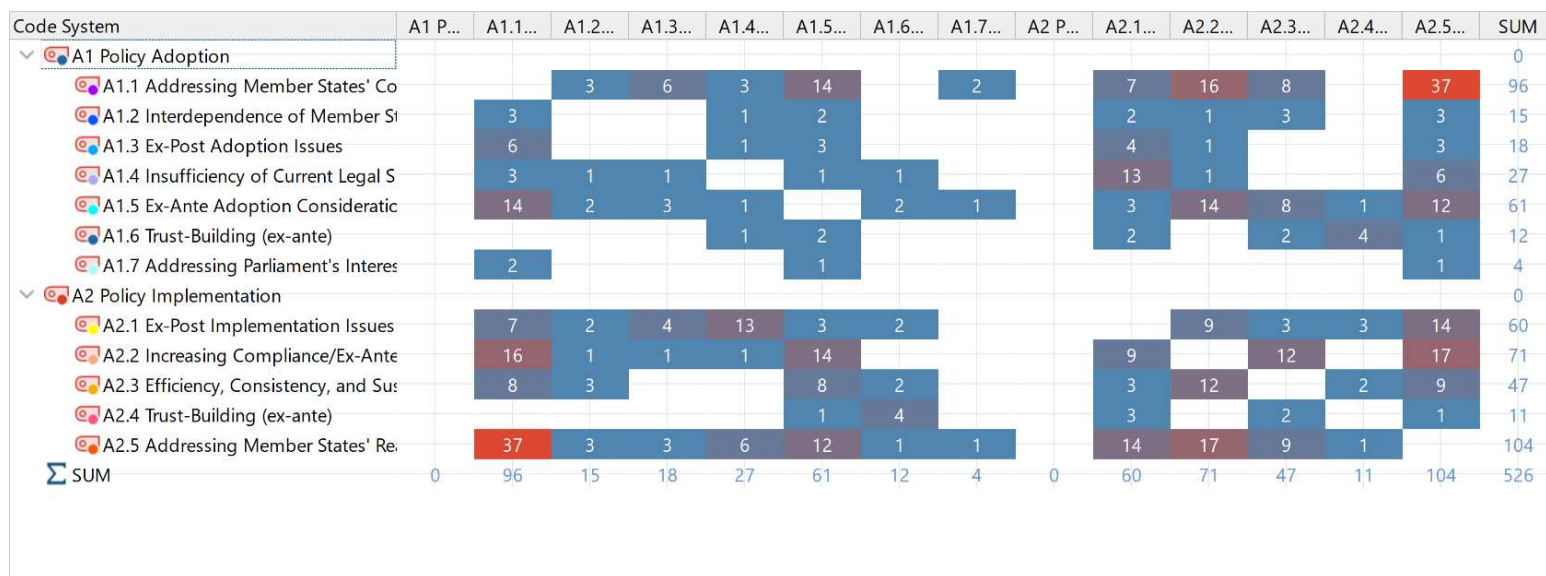


Figure 7: Relations and Overlays of Coded Segments in the Three Main Documents (own representation)

Based on evaluations of past reasons for member states not to adhere to relocation measures and solidarity, as well as past trust and efficiency deficiencies, the Commission proposes a flexible approach that expands the notion of solidarity:

“An approach with the built-in flexibility to choose from the measures that they would be obliged to take ensure [sic!] support to Member States under migratory pressure, respecting the type of solidarity contribution indicated by individual Member States” (COM 2020d: 75)

and

“[...] by setting solidarity measures from among which Member States can choose to contribute.” (COM 2020c: 2; emphasis added)

It is noticeable that the Commission, unlike before, opts for a cooperative instead of a top-down approach to implementation matters, which the Parliament would have preferred in order to improve the monitoring of compliance (C1, C2.1, C2.2, D3):

“The Commission and the Council will then consider any appropriate further actions to be implemented in that respect, within the limits of their respective competencies” (ibid.).

Thus, the Commission is – in line with the theoretical expectation as formulated in hypothesis three – trying to increase compliance through less legal coercion and more national discretion by allowing a flexible choice between three options. This appears to be trust-building and, in the Commission's view, could be a basis on which to build-up (A1, A1.6, A2, A2.3, A2.4, D1).

3. Outlook

As of today (June 6, 2022, at 7.03 pm), no significant progress has been made since the reform proposal was published nearly 20 months ago. Neither Parliament nor Council have yet been able to present a final position for the informal trilogue negotiations between Council, Parliament, and Commission. In the Parliament's case, no official agreement has been found since the presentation of a first draft by the rapporteur MEP Tobé in the LIBE Committee for a Parliamentary position. Here, the committee still has to prepare a recommendation for a decision in the plenary (cf. EP 2022). In the Council, this process seems to take even longer. On the one hand, due to the experiences of the past years in this policy field and the fact that everything should only be negotiated as a package according to multiple requests of the actors involved. On the other hand, because some national parliaments have expressed major reservations regarding the proposal, substantial concerns and disagreements continue within the Council (Coding Table B).

It is generally assumed that external shocks such as the invasion of Ukraine by the Russian Federation and the associated large migration movements could be a strong incentive for swift adoption and implementation. However, there are no hints that any attempts have been made to speed up the process. Instead, existing EU and numerous national asylum and refugee provisions and regimes are being suspended and transitionally replaced by *ad hoc* measures to deal with the situation, which have so far shown a surprisingly high degree of solidarity, unity, and compliance among member states (cf. AlJaZeera 2022; The Guardian 2022; critical view: New Statesman 2022). However, scepticism may be expressed that this situation will remain so if the war and the resulting intensified refugee situation drag on for years to come.

VI. Conclusion

This Master's thesis has addressed the puzzling phenomenon of a supranational actor proposing a dis-integrative policy to govern violence-induced migration by replacing robust, uniform law with a flexible approach and the freedom to choose by initiating the Asylum and Migration Management Regulation. So far, the focus of the academic debate has consistently been on

nation-states, which, due to their structural characteristics, have been more sceptical about integration in sovereignty-sensitive policy areas. Theoretical approaches have been successful in explaining nation-state behaviour but have so far neglected supranational actors, as dis-integration appears counterintuitive at first glance. By combining different streams of literature, it was endeavoured to develop a theoretical framework that assumes as the main explanatory variables constraints through the inter-institutional system in which the Commission is embedded and *ex-ante* and *ex-post* considerations. Furthermore, it was assumed that supranational actors might pursue legal flexibility and choose dis-integration when sophisticated cost-benefit trade-offs suggest that it is more favourable for a proper policy adoption. Additionally, it might constitute a coping mechanism for malfunctioning implementation and uncontrolled dis-integration through wilful non-compliance by member states.

The findings of the qualitative content analysis seem to support the assumption that the Commission is proposing a flexible solidarity mechanism because it is trying to overcome the long-term deadlock in the negotiations on CEAS reform and that a flexible policy design is the lesser evil in this circumstance. It is significantly constrained in its choice of policy designs and appears as an emperor without clothes especially considering the already occurring contested views on even this proposal within the Council before the informal trilogue negotiations. Furthermore, it becomes apparent that by addressing the member states' reasons for not adhering to previous relocation legislation, an attempt is being made to cope with it by providing the member states with a choice and hopefully – from the Commission's perspective – not leading to an unpredictable loss of control. From the Commission's vantage point, it is more favourable to relinquish some influence in a controlled manner than to expose oneself to the danger of losing it in an uncontrolled fashion.

Nevertheless, an ambiguity has emerged that cannot be adequately explained by the theoretical framework and therefore requires further research and revision: While constraints and opinions of the co-legislators significantly influenced the proposed Asylum and Migration Management Regulation, i.e. the inter-institutional system in which the Commission is embedded, and there were both *ex-ante* and *ex-post* considerations given by its position as a policy formulating actor by the sole right to initiative, two unexpected problems have emerged upon critical reflection of the results. First, the Parliament has been neglected beyond the expected degree. Second, the interests of the member states show a high asymmetry and diversity. Nevertheless, the

Commission has been strongly oriented towards a vocal minority for substantial national decision-making latitude. One possible explanatory variable to be investigated for this could be political capital of contention or network effects, which enables certain actors to assert their positions. This asymmetry has not been addressed sufficiently because the member states have been treated as having a homogeneous identity. Further differentiation is therefore necessary.

Although – as already explained in the methodology chapter – the case study has a limited generalizability due to its design, it could nevertheless provide valuable insights for a further scientific discussion of the phenomena of dis-integration and legal flexibility: It could be shown that the national bias, which still prevails in a large part of the research literature, does not adequately reflect reality and insights could be found into which considerations the Commission takes into account in its policy formulation in such a volatile field. Upon further examination, a research agenda should explore the extent to which the findings of this case study can be applied to other cases and how to further differentiate the theoretical framework in order to unleash the greatest possible explanatory power.

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Legislations

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin-III-Regulation).

Treaty on European Union.

Treaty on the Functioning of the European Union.

Appendix

List of Analysed Documents

Coding Table A – European Commission

No.	Author	Title	Publication Date	Full Text Version
1	European Commission	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	September 23, 2020	LINK
2	European Commission	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]	September 23, 2020	LINK
3	European Commission	Commission Staff Working Document Accompanying the document 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]	September 23, 2020	LINK

Coding Table B – Council and Member States

No.	Author	Title	Publication Date	Full Text Version
1	Council of the European Union	Statement by the Council on Article 80 TFEU	April 7, 2014	LINK
2	Cyprus, Greece, Italy, Malta, and Spain	Dublin Regulation. Position paper of Cyprus, Greece, Italy, Malta and Spain on the Proposal recasting the Dublin Regulation	unknown	LINK
3	National Assembly of Hungary	National Parliament Reasoned Opinion on Subsidiarity	January 25, 2021	LINK
4	Italian Senate	National Parliament Reasoned Opinion on Subsidiarity	February 5, 2021	LINK
5	Senate of Romania	Opinion of the Senate of Romania	March 24, 2021	LINK
6	Greek Parliament	Opinion on The new Pact on Migration and Asylum	March 5, 2021	LINK
7	Federal Council of Germany	Beschluss des Bundesrates	February 12, 2021	LINK

Coding Table C – European Parliament


































No.	Author	Title	Publication Date	Full Text Version
1	European Parliament	European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration	April 12, 2016	LINK
2	European Parliament	Draft Report	October 11, 2021	LINK

Coding Table D – Miscellaneous

No.	Author	Title	Publication Date	Full Text Version
1	European Parliamentary Research Service	Reforming asylum and migration management	October, 2020	LINK

Altogether, documents amounting to 411 pages were coded. A list of all original documents as well as the coded version of the primary sources can be accessed in a folder [here](#). The order corresponds to the listing above.

Utilised Categories and Sub-categories

▼ ●  Code System	386
▼ ●  A1 Policy Adoption	0
●  A1.1 Addressing Member States' Concerns/Interests	47
●  A1.2 Interdependence of Member States	7
●  A1.3 Ex-Post Adoption Issues	15
●  A1.4 Insufficiency of Current Legal Situation (ex-post)	25
●  A1.5 Ex-Ante Adoption Considerations	27
●  A1.6 Trust-Building (ex-ante)	7
●  A1.7 Addressing Parliament's Interests	6
▼ ●  A2 Policy Implementation	0
●  A2.1 Ex-Post Implementation Issues	41
●  A2.2 Increasing Compliance/Ex-Ante Implementation Consideration	40
●  A2.3 Efficiency, Consistency, and Sustainability (ex-ante)	30
●  A2.4 Trust-Building (ex-ante)	6
●  A2.5 Addressing Member States' Reasons for Non-Compliance	53
▼ ●  B1 Policy Adoption	0
●  B1.1 Voluntariness of Measures	10
●  B1.2 Touching Core State Powers	6
●  B1.3 National Adoption Capacity	10
▼ ●  B2 Policy Implementation	0
●  B2.1 National Discretion Necessary	7
●  B2.2 Support Demanded	8
●  B2.3 Ex-Ante Implementation Issues	5
▼ ●  C1 Policy Adoption	0
●  C1.1 Solidarity as Legal Principle	6
●  C2.1 Supranational Approach	5
▼ ●  C2 Policy Implementation	0
●  C2.1 Robust Implementation of Solidarity	5
●  C2.2 Implementation with Supranational Institutions	4
▼ ●  D Miscellaneous	0
●  D1 European Commission's Considerations	5
●  D2 Council and Member States' Position	5
●  D3 European Parliament's Position	6

For the coding, the analysis software [MAXQDA](#) was used because of better visualisation possibilities. However, due to the qualitative and interpretative character of the analysis procedure, the allocation of individual empirical segments was done manually and not automated by the software. The complete coding tables indicating the assigned text passages with the software-based reference can be found below.

Coding Table A – European Commission’s Justifications and Considerations

Category	Sub-Categories	Definition/Criteria	Coded Segments in Data Material	Coding Rule(s)
<p>A1. Policy Adoption</p>		<p>The Commission argues the costs and benefits of the proposed regulation in terms of the achievability of adoption by the co-legislators Parliament and Council and weighs them in favour of dis-integrative legal flexibility and soft governance approaches (see hypotheses 2, 1).</p>		<p>In addition to explicit remarks on costs, benefits, and considerations of the feasibility of successful adoption, implicit aspects are generally likewise to be coded interpretatively, since it appears likely that certain considerations cannot be mentioned <i>expressis verbis</i> by political actors, for example, due to political conformity pressure. In this respect, the analysis goes beyond a mere buzzword scan and becomes more sophisticated. For better understanding, as a minimum, entire sentences are usually encoded. Excessively repetitive coding was suspended when there was a significant amount of duplication within a document.</p>

<p>A1.1 Addressing Member States Concerns/Interests</p>	<p>By addressing the interests respectively concerns of the member states or the Council as representative of national governments, the Commission recognises the need for the co-legislator's consensus and thus tries to facilitate adoption by avoiding deadlock.</p>	<p>“Importantly, the lack of a fair and effective migration system hinders the access of migrants to the asylum procedure, equal treatment in all Member States as regards the procedural safeguards for asylum-seekers' rights and legal certainty of asylum decisions.” Commission Staff Working Document [COM]: 9 - 9 (0)</p> <p>“It provides a comprehensive approach to migration management, including a new and wider approach to solidarity, in particular to address in a meaningful way situations where Member States are faced with migratory pressure and to take into account the specificities of search and rescue operations.” Commission Staff Working Document [COM]: 10 - 10 (0)</p> <p>“It introduces new forms of solidarity, by widening the scope of relocation and including return sponsorship schemes through which a Member State commits to support returns from another one and, if the efforts are not successful, to transfer the irregular migrant” Commission Staff Working Document [COM]: 11 - 11 (0)</p> <p>“The solution proposed responds to the need of broadening solidarity beyond the relocation of asylum seekers, and also to include the relocation of other categories of migrants and cater for a wider range of situations.” Commission Staff Working Document [COM]: 12 - 12 (0)</p> <p>“Member States engaged actively in these consultations, presenting their ideas and suggestions for the upcoming proposals, with common ground emerging on the need for unity, for gradual progress in solving the weaknesses of the</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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current system, for a new system of fair sharing of responsibility to which all Member States can contribute, for strong border protection, and on the importance of the external dimension of migration and improved returns”
Commission Staff Working Document [COM]: 25 - 25 (0)

“The fresh and comprehensive approach to migration management includes a new way of burden sharing. The Commission’s intention of finding new forms of solidarity was welcomed at several instances.”
Commission Staff Working Document [COM]: 25 - 25 (0)

“In these discussions, using leverage from other policy areas emerged as a necessary element to improve cooperation with third countries, as did the need to enhance assisted voluntary return schemes and tools to increase take up by returnees and to ensure sustainable reintegration in countries of origin, the need to promote a more strategic and better coordinated approach to readmission, through wider political engagement, effective procedures and operational capacity”
Commission Staff Working Document [COM]: 26 - 26 (0)

“Since the peak of the crisis in 2015, the focus of discussions and actions on solidarity were almost exclusively focussed on relocation.”
Commission Staff Working Document [COM]: 51 - 51 (0)

“On the legislative side, negotiations on the 2016 CEAS proposals did not lead to an agreement among Member States, in particular due to divisions on the issue of compulsory relocation of applicants for international protection, which continues to be a bone of contention in the

context of consultations with Member States on the New Pact on Asylum and Migration. Finding an agreement among Member States is therefore key for a more effective management of migration.”

Commission Staff Working Document [COM]: 52 - 52 (0)

“In addition, since 2018, a number of Member States demonstrated willingness to engage in solidarity by undertaking further relocations on a voluntary basis.”

Commission Staff Working Document [COM]: 52 - 52 (0)

“The willingness to engage in solidarity is possibly also hampered by the fact that Member States currently lack other the means to offer solidarity support in other fields, notably in the one of return. Ensuring successful return is a challenge for many Member States and providing for solidarity in this area could be of great assistance to Member States facing arrivals of mixed migration flows.”

Commission Staff Working Document [COM]: 53 - 53 (0)

“Negotiations in the Council on the 2016 proposal for a Dublin Regulation did not lead to an agreement among Member States due to divergent views on the balance between responsibility and solidarity. Issues such as relocation following mathematical calculations of pressure, the necessity of Member States of first entry to undertake an admissibility assessment and the stable responsibility proved to be the most difficult issues”

Commission Staff Working Document [COM]: 58 - 58 (0)

“In addition, there are still a number of challenges putting Member States’ asylum, reception and return systems under

strain. These are, in particular, the increasing proportion of asylum applicants without genuine claims, the persistent onward movements of migrants within the EU as well as the different challenges on the different migratory routes, a lack of a solidarity mechanism that can ease the pressure on Member States including on how to deal with migrants after disembarkation following SAR operations.”

Commission Staff Working Document [COM]: 69 - 69 (0)

“A structured solidarity mechanism is proposed to provide for better migration management by putting in place a system to address situations where Member States are faced with migratory pressure in order to give meaning to the principle of solidarity and a fair sharing of responsibility in the Treaty on the Functioning of the European Union.”

Commission Staff Working Document [COM]: 75 - 75 (0)

“This means broadening the scope to asylum-seekers that are not in a border procedure and to beneficiaries of international protection in order to ensure that the solidarity mechanism is more flexible and includes tools that can also deal with the realities of an increasing share of migrants that do not have protection needs.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“An approach with the built-in flexibility to choose from the measures that they would be obliged to take ensure support to Member States under migratory pressure, respecting the type of solidarity contribution indicated by individual Member States.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“In addition, the strain on Member States' asylum systems continues to put a heavy burden on Member States of first arrival as well as on the asylum systems of other Member States through unauthorised movements”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“This new approach anchors the existing system in a wider framework that is able to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“This proposal provides for a new solidarity mechanism that is flexible and responsive in design in order to be adjustable to the different situations presented by the different migratory challenges faced by the Member States, by setting solidarity measures from among which Member States can choose to contribute.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“In addition, Member States will be able to offer voluntary contributions at any time. The Commission will ensure the coordination of such measures at all times.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“The Commission and the Council will then consider any appropriate further actions to be implemented in that respect, within the limits of their respective competencies.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“Furthermore, the solidarity measures will also include new possibilities for Member States to provide assistance to each other in carrying out returns, in the form of return sponsorship. Under this new form of solidarity measure, Member States would commit to return irregular migrants on behalf of another Member State, carrying out all the activities necessary for this purpose directly from the territory of the benefitting Member State”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“The new approach to migration management also includes improving the rules on responsibility for examining an application for international protection, in order to contribute to reducing unauthorised movements in a proportionate and reasonable manner.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“The system was supplemented with a compulsory and automatic corrective allocation mechanism that, based on a reference key, was triggered when a Member State was faced with disproportionate pressure, ensuring a clear and binding system of responsibility sharing between Member States”

Proposal for a Asylum and Migration Management Regulation [COM]: 5 - 5 (0)

“On the side of the Council, the Member States were unable to agree on a common approach and the negotiations stalled”
Proposal for a Asylum and Migration Management Regulation [COM]: 5 - 5 (0)

“In order to support solidarity measures focused on relocation and the subsequent transfers, in addition to the transfers covered by the procedures for determination of responsibility of Member States, this proposal foresees lump sums to be paid to Member States and is fully consistent with the EU budget to incentivise such measures and the efficient application of the Regulation”
Proposal for a Asylum and Migration Management Regulation [COM]: 8 - 8 (0)

“The evidence paper further highlights that the lack of a sustainable system which works for all Member States has consequences for the possibility to ensure immediate and real reactivity to external factors. Namely, there is no structured solidarity mechanism in the current Dublin system or in the CEAS in general, even though the pressure on individual Member States can vary greatly and shift suddenly and in an unpredictable way.”
Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“This solidarity concept should be compulsory in nature in order to be able to respond predictably and effectively to the changing realities with an increasing share of mixed migration flows towards the Union, and to ensure fair sharing of responsibility in line with the Treaty.”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“The hierarchy of criteria as set out in the Dublin III Regulation does not take into account the realities faced by the migration systems of the Member States, nor does it aim for a balance of efforts.”

Proposal for a Asylum and Migration Management Regulation [COM]: 15 - 15 (0)

“The proposal retains the link between responsibility in the field of asylum and the respect by Member States of their obligations to protect the external border, taking into account international obligations of carrying out search and rescue operations, subject to exceptions designed to protect family life and the best interests of the child”

Proposal for a Asylum and Migration Management Regulation [COM]: 18 - 18 (0)

“The solidarity mechanism is flexible in design so that it can be applied to situations with different migratory flows and realities. Solidarity contributions that Member States will be under the obligation to provide consist of either relocation or return sponsorship and there is also the possibility to contribute to measures aimed at strengthening the capacity of Member States in the field of asylum, reception and return and in the external dimension”

Proposal for a Asylum and Migration Management Regulation [COM]: 19 - 19 (0)

“In the field of return, such measures could include, for instance, the financial or other assistance focussed on

infrastructure and facilities that may be necessary to improve the enforcement of returns or providing material or transport means for carrying out operations. Where the Commission assesses that they are proportionate to the share of the Member State and in line with the objectives set out in the Asylum and Migration Fund, these contributions will be specified in the implementing act”

Proposal for a Asylum and Migration Management Regulation [COM]: 21 - 21 (0)

“The proposal provides for financial incentives for relocation.”

Proposal for a Asylum and Migration Management Regulation [COM]: 23 - 23 (0)

“Member States should have sufficient human and financial resources and infrastructure to effectively implement asylum and migration management policies and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 29 - 29 (0)

“Those Member States should also be able to rely on the use of the ‘solidarity pool’ for the relocation of vulnerable persons”

Proposal for a Asylum and Migration Management Regulation [COM]: 30 - 30 (0)

“Such a mechanism should provide for different types of solidarity measures and should be flexible and able to adapt

to the evolving nature of the migratory challenges facing a Member State”

Proposal for a Asylum and Migration Management Regulation [COM]: 30 - 30 (0)

“The overall contribution of each Member State to the solidarity pool should be determined through indications by Member States of the measures by which they wish to contribute.”

Proposal for a Asylum and Migration Management Regulation [COM]: 31 - 31 (0)

“The solidarity mechanism should include measures to promote a fair sharing of responsibility and a balance of effort between Member States also in the area of return”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“Where Member States are themselves benefitting Member States they should not be obliged to make solidarity contributions to other Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“In order to prevent that persons who represent a security risk are transferred among the Member States, it is necessary to ensure that the Member State where an application is first registered does not apply the responsibility criteria or the benefitting Member State does not apply the relocation procedure where there are reasonable grounds to consider the person concerned a danger to national security or public order.”

Proposal for a Asylum and Migration Management Regulation [COM]: 35 - 35 (0)

“The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways. It unearthed genuine concerns, and brought to the surface differences which need to be acknowledged and overcome”

New Pact on Migration and Asylum [COM]: 2 - 2 (0)

“The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“This includes a new solidarity mechanism to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations, and ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole. Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“While each Member State would have to contribute to relocation and/or return sponsorships and a distribution key would be applied, Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“Whilst always leaving Member States with viable alternatives to relocation, a safety net will ensure that the pressure on a Member State is effectively alleviated by relocation or return sponsorship”

New Pact on Migration and Asylum [COM]: 7 - 7 (0)

“That is why the New Pact has been built on careful consultations: with the European Parliament and the Council, the Member States, and with stakeholders”

New Pact on Migration and Asylum [COM]: 29 - 29 (0)

“The Commission considers that the result is a balance of interests and needs which deserves the support of all. The Commission now calls on the European Parliament and the Council to bring a new impetus. A first step should be to reach a common understanding on the new solidarity mechanism as well as the responsibility elements in the form of the new screening and border procedure by the end of this year, followed swiftly by adopting the full package of legislation required. By working together, the EU can and must ensure that a truly common migration and asylum policy is quickly made a reality”

		New Pact on Migration and Asylum [COM]: 29 - 29 (0)	
<p>A1.2 Interdependence of Member States</p>	<p>Existing literature assumes that (dis-)integration is particularly likely when political volatility, sovereignty interests and, at the same time, a high degree of interdependence coincide. Therefore, evidence from the Commission on this very interdependence needs to be found in order to observe whether this is used to justify the dis-integrative proposal.</p>	<p>“This framework must take into account the ever-changing realities of migration, which have meant increased complexity and an intensified need for coordination” Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)</p> <p>“Achievement of these objectives requires action at the EU level since they are cross-border by nature. It is clear that actions taken by individual Member States cannot satisfactorily reply to the need for a common EU approach to a common problem.” Proposal for a Asylum and Migration Management Regulation [COM]: 10 - 10 (0)</p> <p>“The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways. It unearthed genuine concerns, and brought to the surface differences which need to be acknowledged and overcome” New Pact on Migration and Asylum [COM]: 2 - 2 (0)</p> <p>“Above all, it highlighted a fundamental truth inherent in the nature of the EU: that every action has implications for others” New Pact on Migration and Asylum [COM]: 2 - 2 (0)</p> <p>“A new, durable European framework is needed, to manage the interdependence between Member States’ policies and decisions and to offer a proper response to the opportunities and challenges in normal times, in situations of pressure and</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

		<p>in crisis situations: one that can provide certainty, clarity and decent conditions for the men, women and children arriving in the EU, and that can also allow Europeans to trust that migration is managed in an effective and humane way, fully in line with our values” New Pact on Migration and Asylum [COM]: 2 - 2 (0)</p> <p>“The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation” New Pact on Migration and Asylum [COM]: 3 - 3 (0)</p> <p>“This includes a new solidarity mechanism to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations, and ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole. Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice” New Pact on Migration and Asylum [COM]: 6 - 6 (0)</p>	
A1.3	As the Commission is at the beginning of the policy	“The solution proposed responds to the need of broadening solidarity beyond the relocation of asylum seekers, and also	1) Explicit

<p>Ex-Post Adoption Issues</p>	<p>cycle with its right of initiative, it must not only ensure that adoption is possible in the future, but also address it with a view to an ex-post, i.e. retrospective, evaluation of adoption problems in the previous term(s) and adapt its proposed policy design accordingly.</p>	<p>to include the relocation of other categories of migrants and cater for a wider range of situations.” Commission Staff Working Document [COM]: 12 - 12 (0)</p> <p>“However, the Council did not reach a common position on the reform of the Dublin system and the Asylum Procedure Regulation.” Commission Staff Working Document [COM]: 15 - 15 (0)</p> <p>“Legislative negotiations between the European Parliament and the Council are ongoing. This proposal builds on and complements several other policy and legislative initiatives launched in the last 5 years, aimed at strengthening the effectiveness of return” Commission Staff Working Document [COM]: 20 - 20 (0)</p> <p>“On the legislative side, negotiations on the 2016 CEAS proposals did not lead to an agreement among Member States, in particular due to divisions on the issue of compulsory relocation of applicants for international protection, which continues to be a bone of contention in the context of consultations with Member States on the New Pact on Asylum and Migration. Finding an agreement among Member States is therefore key for a more effective management of migration.” Commission Staff Working Document [COM]: 52 - 52 (0)</p> <p>“Negotiations in the Council on the 2016 proposal for a Dublin Regulation did not lead to an agreement among Member States due to divergent views on the balance between responsibility and solidarity. Issues such as relocation following mathematical calculations of pressure,</p>	<p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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the necessity of Member States of first entry to undertake an admissibility assessment and the stable responsibility proved to be the most difficult issues”

Commission Staff Working Document [COM]: 58 - 58 (0)

d”iverging views in the Council have prevented agreement on the full reform.”

Commission Staff Working Document [COM]: 69 - 69 (0)

“In addition, there are still a number of challenges putting Member States’ asylum, reception and return systems under strain. These are, in particular, the increasing proportion of asylum applicants without genuine claims, the persistent onward movements of migrants within the EU as well as the different challenges on the different migratory routes, a lack of a solidarity mechanism that can ease the pressure on Member States including on how to deal with migrants after disembarkation following SAR operations.”

Commission Staff Working Document [COM]: 69 - 69 (0)

“Whereas significant progress was made on a number of these proposals, and provisional political agreements were reached between the co-legislators on the proposals for the Qualification Regulation, the Reception Conditions Directive, the Union Resettlement Framework Regulation, the Eurodac Regulation and the first proposal establishing the EU Agency for Asylum, less progress was achieved on the proposals for the Dublin Regulation and the Asylum Procedure Regulation, mainly due to diverging views in the Council. There was also not sufficient support for agreeing on only some of the asylum reform proposals ahead of an agreement on the full reform.”

Proposal for a Asylum and Migration Management Regulation [COM]: 4 - 4 (0)

“The system was supplemented with a compulsory and automatic corrective allocation mechanism that, based on a reference key, was triggered when a Member State was faced with disproportionate pressure, ensuring a clear and binding system of responsibility sharing between Member States”
Proposal for a Asylum and Migration Management Regulation [COM]: 5 - 5 (0)

“On the side of the Council, the Member States were unable to agree on a common approach and the negotiations stalled”
Proposal for a Asylum and Migration Management Regulation [COM]: 5 - 5 (0)

“However, since no agreement could be found on the proposal for a Dublin Regulation published on 4 May 2016, and since this proposal includes a new structured solidarity mechanism and also takes into account other changes proposed in 2016 aimed primarily at making the procedures leading to a Dublin transfer more effective, such as take back notifications and limiting shift of responsibility, it is necessary to withdraw that proposal.”
Proposal for a Asylum and Migration Management Regulation [COM]: 7 - 7 (0)

“RESULTS OF EX-POST EVALUATIONS”
Proposal for a Asylum and Migration Management Regulation [COM]: 11 - 11 (0)

		<p>“Overall, the evidence paper acknowledges that there is a lack of integrated policy-making, which brings together the different policies into a coherent whole.” Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)</p> <p>“The Commission’s previous proposals to reform the Common European Asylum System aimed to create a fair and swift process guaranteeing access to the asylum procedure, as well as equal treatment, clarity and legal certainty for asylum seekers, and addressing shortcomings on return” New Pact on Migration and Asylum [COM]: 4 - 4 (0)</p> <p>“Drawing on the experience of the negotiations on the 2016 proposals to reform the Common European Asylum System, it is clear that an approach that goes beyond the limitations of the current Dublin Regulation is required” New Pact on Migration and Asylum [COM]: 6 - 6 (0)</p>	
<p>A1.4 Insufficiency of Current Legal Situation (ex-post)</p>	<p>The evaluation of a policy has revealed legal insufficiencies that need to be addressed by a proposal that adequately tackles these problems.</p>	<p>“First, there is a lack of an integrated approach at the EU-level that is effectively translated into national asylum and migration policies.” Commission Staff Working Document [COM]: 6 - 6 (0)</p> <p>“Despite increased cooperation in the implementation of the Common European Asylum System (CEAS), Member States’ asylum and return systems operate mostly separately.” Commission Staff Working Document [COM]: 6 - 6 (0)</p> <p>“Second, fragmented and voluntary ad hoc solidarity between Member States has put an disproportionate strain on Member States of first entry, threatened the political cohesion</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-</p>

among Member States and put migrants in vulnerable situations at risk.”

Commission Staff Working Document [COM]: 7 - 7 (0)

“Since then, Member States have engaged in voluntary exercises of relocation of migrants disembarked following search and rescue (SAR) operations, e.g. the Joint Declaration of Intent on a controlled emergency procedure discussed among France, Germany, Malta and Italy in September 2019, and the relocation exercise of vulnerable and unaccompanied minors from the Greek hotspots, agreed with several Member States in March 2020. However, relocation efforts have revealed several difficulties with such ad hoc and temporary formats of cooperation, with sometimes prolonged periods of time to find agreements to allow for disembarkation, and with only relatively few Member States contributing to relocation. This points to the need for a more comprehensive, effective and sustainable relocation system.”

Commission Staff Working Document [COM]: 8 - 8 (0)

“A third challenge concerns the lack of effective rules for sharing responsibility for asylum applicants across the EU”

Commission Staff Working Document [COM]: 8 - 8 (0)

“There are important structural weaknesses and shortcomings in the design and implementation of the European asylum and migration policy. Member States’ asylum and return systems remain largely not harmonised, thus creating inefficiencies and encouraging the movement of migrants across Europe to seek the best reception conditions and prospects for their stay”

categories, which have been separated for analytical purposes only.

Commission Staff Working Document [COM]: 22 - 22 (0)

“Another structural weakness of the Common European Asylum System (CEAS) is the absence of a functioning system for the fair sharing of responsibility among Member States. The current Dublin system is not aimed at ensuring the fair sharing of responsibility, but rather at objectively allocating the responsibility to examine an application for international protection to a specific Member State”

Commission Staff Working Document [COM]: 23 - 23 (0)

“Moreover, the effectiveness of this system is undermined by the fact that current rules can be abused to provide for a shift of responsibility among Member States after a given time.”

Commission Staff Working Document [COM]: 23 - 23 (0)

“Member States’ asylum and return systems operate mostly separately, creating inefficiencies and encouraging the movement of migrants across Europe. There is a lack of coordination and streamlining at all stages of the migration management process, from the arrival to the processing of asylum requests, provision of reception conditions and handling of returns.”

Commission Staff Working Document [COM]: 43 - 43 (0)

“The lack of an integrated approach leads to an unlevel playing field across Member States, which subsequently hampers efforts to ensure a fair and swift process that guarantees access to procedures, equal treatment, clarity and legal certainty.”

Commission Staff Working Document [COM]: 43 - 43 (0)

“Since the peak of the crisis in 2015, the focus of discussions and actions on solidarity were almost exclusively focussed on relocation.”

Commission Staff Working Document [COM]: 51 - 51 (0)

“While there is a small but important willingness to demonstrate solidarity for persons disembarked following SAR, it is clear that relocations in the form of voluntary exercises alone are not sustainable”

Commission Staff Working Document [COM]: 53 - 53 (0)

“The current migration system is insufficient in addressing these realities”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“In particular, there is currently no effective solidarity mechanism in place and no efficient rules on responsibility”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“The Commission also proposed a crisis relocation mechanism in September 2015¹⁵, in order to design a structural solution for dealing with crisis situations such as those in Greece and Italy that led to the two relocation decisions adopted by the Council in September 2015”

Proposal for a Asylum and Migration Management Regulation [COM]: 7 - 7 (0)

“Overall, the evidence paper acknowledges that there is a lack of integrated policy-making, which brings together the different policies into a coherent whole.”

Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“Furthermore, the lack of a coherent EU approach on the link between termination of legal stay due to a negative asylum decision and the beginning of return procedures including requesting readmission to third countries, decreases the effectiveness of the entire migration management system.”

Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“Without this, Member States would have to rely on ad hoc agreements as in pre-Dublin times, which would make the determination of responsibility between Member States extremely difficult”

Proposal for a Asylum and Migration Management Regulation [COM]: 14 - 14 (0)

“It was further concluded that the design of the Dublin III Regulation had a number of shortcomings that made it more difficult to achieve its main objectives.”

Proposal for a Asylum and Migration Management Regulation [COM]: 15 - 15 (0)

“The hierarchy of criteria as set out in the Dublin III Regulation does not take into account the realities faced by the migration systems of the Member States, nor does it aim for a balance of efforts.”

Proposal for a Asylum and Migration Management Regulation [COM]: 15 - 15 (0)

“Member States understood the need for progress in solving the weaknesses of the current system, the need for a new system of fair sharing of responsibility to which all Member States would be under the obligation to contribute, strong border protection, importance of the external dimension of migration, and improved returns.”

Proposal for a Asylum and Migration Management Regulation [COM]: 15 - 15 (0)

“The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways”

New Pact on Migration and Asylum [COM]: 2 - 2 (0)

“However, ad hoc responses cannot provide a sustainable answer and major structural weaknesses remain, both in design and implementation”

New Pact on Migration and Asylum [COM]: 4 - 4 (0)

“Rules for determining the Member State responsible for an asylum claim should be part of a common framework, and offer smarter and more flexible tools to help Member States facing the greatest challenges”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“Such a system can only function if it has the tools needed to deliver. This means a strong legal framework able to give the clarity and focus needed for mutual confidence, with

		<p>robust and fair rules for those in need of international protection and those who do not have the right to stay” New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p>	
<p>A1.5 Ex-Ante Adoption Considerations</p>	<p>It is not enough for the policy formulator to reflect ex-post on an evaluation of problems of existing practices and to correct them in a new proposal. Rather, it is expected that a forward-looking approach is taken that takes into account realpolitik constraints based on the political stance of key actors for the adoption step.</p>	<p>“While these measures point to a willingness of Member States to look at solidarity in a broader context and step up to assist those under major pressure, it also highlights the need for a structured and permanent framework for solidarity.” Commission Staff Working Document [COM]: 8 - 8 (0)</p> <p>“It provides a comprehensive approach to migration management, including a new and wider approach to solidarity, in particular to address in a meaningful way situations where Member States are faced with migratory pressure and to take into account the specificities of search and rescue operations.” Commission Staff Working Document [COM]: 10 - 10 (0)</p> <p>“The proposed system provides for a governance and monitoring structure based on Member States’ reports on the implementation of the common framework, which will feed into a new European Strategy on Asylum and Migration Management. This will allow for comprehensive view of the situation at EU level and an early identification of gaps that require solidarity contributions” Commission Staff Working Document [COM]: 10 - 10 (0)</p> <p>“The proposal also addresses the loopholes in the existing asylum and return procedures by a new requirement to issue negative asylum decisions and return decisions together as part of the same act, allowing for only one level of appeal in a border procedure, with the same court looking at a</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

rejection decision and return decision and with reduced possibilities during that time for an applicant to remain in the Member State.”

Commission Staff Working Document [COM]: 11 - 11 (0)

“It introduces new forms of solidarity, by widening the scope of relocation and including return sponsorship schemes through which a Member State commits to support returns from another one and, if the efforts are not successful, to transfer the irregular migrant”

Commission Staff Working Document [COM]: 11 - 11 (0)

“The solution proposed responds to the need of broadening solidarity beyond the relocation of asylum seekers, and also to include the relocation of other categories of migrants and cater for a wider range of situations.”

Commission Staff Working Document [COM]: 12 - 12 (0)

“The Commission reaffirmed its commitment to work towards an agreement on the whole package as part of the comprehensive approach to migration.”

Commission Staff Working Document [COM]: 25 - 25 (0)

“On the legislative side, negotiations on the 2016 CEAS proposals did not lead to an agreement among Member States, in particular due to divisions on the issue of compulsory relocation of applicants for international protection, which continues to be a bone of contention in the context of consultations with Member States on the New Pact on Asylum and Migration. Finding an agreement among Member States is therefore key for a more effective management of migration.”

Commission Staff Working Document [COM]: 52 - 52 (0)

“The challenges described thus far can only be addressed by making the European asylum and migration system more efficient, comprehensive and sustainable.”

Commission Staff Working Document [COM]: 71 - 71 (0)

“This means broadening the scope to asylum-seekers that are not in a border procedure and to beneficiaries of international protection in order to ensure that the solidarity mechanism is more flexible and includes tools that can also deal with the realities of an increasing share of migrants that do not have protection needs.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“An approach with the built-in flexibility to choose from the measures that they would be obliged to take ensure support to Member States under migratory pressure, respecting the type of solidarity contribution indicated by individual Member States.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“It recognises that a comprehensive approach also means a stronger, more sustainable and tangible expression of the principle of solidarity and fair sharing of responsibility, which finds its balance in a broader context, widening the focus beyond the issue of which Member State is responsible for examining an application for international protection.”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“With a view to overcome the current deadlock and provide a wider and solid framework for the migration and asylum policies, the Commission intends to withdraw the 2016 proposal”

Proposal for a Asylum and Migration Management Regulation [COM]: 5 - 5 (0)

“However, since no agreement could be found on the proposal for a Dublin Regulation published on 4 May 2016, and since this proposal includes a new structured solidarity mechanism and also takes into account other changes proposed in 2016 aimed primarily at making the procedures leading to a Dublin transfer more effective, such as take back notifications and limiting shift of responsibility, it is necessary to withdraw that proposal.”

Proposal for a Asylum and Migration Management Regulation [COM]: 7 - 7 (0)

“This solidarity concept should be compulsory in nature in order to be able to respond predictably and effectively to the changing realities with an increasing share of mixed migration flows towards the Union, and to ensure fair sharing of responsibility in line with the Treaty.”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“The solidarity mechanism is flexible in design so that it can be applied to situations with different migratory flows and realities. Solidarity contributions that Member States will be under the obligation to provide consist of either relocation or return sponsorship and there is also the possibility to contribute to measures aimed at strengthening the capacity

of Member States in the field of asylum, reception and return and in the external dimension”

Proposal for a Asylum and Migration Management Regulation [COM]: 19 - 19 (0)

“In order to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies, there is a need for integrated policy-making in the field of asylum and migration management, including both its internal and external components, which is part of the comprehensive approach.”

Proposal for a Asylum and Migration Management Regulation [COM]: 29 - 29 (0)

“Such a mechanism should provide for different types of solidarity measures and should be flexible and able to adapt to the evolving nature of the migratory challenges facing a Member State”

Proposal for a Asylum and Migration Management Regulation [COM]: 30 - 30 (0)

“The overall contribution of each Member State to the solidarity pool should be determined through indications by Member States of the measures by which they wish to contribute.”

Proposal for a Asylum and Migration Management Regulation [COM]: 31 - 31 (0)

“The solidarity mechanism should include measures to promote a fair sharing of responsibility and a balance of effort between Member States also in the area of return”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“Where Member States are themselves benefitting Member States they should not be obliged to make solidarity contributions to other Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“A new, durable European framework is needed, to manage the interdependence between Member States’ 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: one that can provide certainty, clarity and decent conditions for the men, women and children arriving in the EU, and that can also allow Europeans to trust that migration is managed in an effective and humane way, fully in line with our values.”

New Pact on Migration and Asylum [COM]: 2 - 2 (0)

“The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“The Commission will therefore withdraw its 2016 proposal amending the Dublin Regulation to be replaced by a new, broader instrument for a common framework for asylum and migration management – the Asylum and Migration Management Regulation. This reform is urgent and a political agreement on the core principles should be reached by the end of 2020.”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“This new common framework will set out the principles and structures needed for an integrated approach for migration and asylum policy, which ensures a fair sharing of responsibility and addresses effectively mixed arrivals of persons in need of international protection and those who are not.”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“Such a system can only function if it has the tools needed to deliver. This means 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”

New Pact on Migration and Asylum [COM]: 29 - 29 (0)

“The Commission considers that the result is a balance of interests and needs which deserves the support of all. The Commission now calls on the European Parliament and the Council to bring a new impetus. A first step should be to reach a common understanding on the new solidarity mechanism as well as the responsibility elements in the form of the new screening and border procedure by the end of this year, followed swiftly by adopting the full package of legislation

		<p>required. By working together, the EU can and must ensure that a truly common migration and asylum policy is quickly made a reality” New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p>	
<p>A1.6 Trust-building (ex-ante)</p>	<p>Trust-building considerations are needed to achieve common ground for speedy and efficient adoption of legislative packages.</p>	<p>“The proposed system provides for a governance and monitoring structure based on Member States’ reports on the implementation of the common framework, which will feed into a new European Strategy on Asylum and Migration Management. This will allow for comprehensive view of the situation at EU level and an early identification of gaps that require solidarity contributions” Commission Staff Working Document [COM]: 10 - 10 (0)</p> <p>“This proposal puts in place a common framework for asylum and migration management at EU level as a key contribution to the comprehensive approach and seeks to promote mutual trust between the Member States” Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)</p> <p>“To this end, a comprehensive approach is required with the objective of reinforcing mutual trust between Member States which should bring together policy in the areas of asylum and migration management and towards relations with relevant third countries, recognising that the effectiveness of such an approach depends on all components being jointly addressed and in an integrated manner.” Proposal for a Asylum and Migration Management Regulation [COM]: 28 - 28 (0)</p> <p>“And it will foster trust in EU policies by closing the existing implementation gap.”</p>	<p>1) Explicit 2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

		<p>New Pact on Migration and Asylum [COM]: 3 - 3 (0)</p> <p>“Key to trust in EU and national policies is consistency in implementation, requiring enhanced monitoring and operational support by EU Agencies. This includes more systematic Commission monitoring of both existing and new rules, including through infringement procedures.”</p> <p>New Pact on Migration and Asylum [COM]: 7 - 7 (0)</p> <p>“This New Pact on Migration and Asylum sets out the end-to-end approach needed to make migration management in Europe fair, efficient and sustainable.”</p> <p>New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p> <p>“Such a system can only function if it has the tools needed to deliver. This means 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”</p> <p>New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p>	
<p>A1.7 Addressing Parliament's Interests</p>	<p>Since not only the Council has to agree to a regulation in the ordinary legislative procedure with co-decision, but also the Parliament with a majority vote, the Commission does</p>	<p>“The European Parliament's LIBE Committee expressed, in a letter to Vice-President Schinas and Commissioner Johansson (January 2020) the importance of a holistic approach to a sustainable asylum and migration policy, highlighting that the Parliament had adopted a mandate for all the 2016 CEAS proposals, which should be taken into account for any new initiative the Commission intends to launch.”</p> <p>Commission Staff Working Document [COM]: 24 - 24 (0)</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories</p>

not only consider national interests, but also those wishes for the adoption of the regulation which the Parliament has expressed.

“Several political groups (European People’s Party, Greens/EFA, Renew Europe) presented position papers in which they expressed their views calling for a swift conclusion on the proposals for migration and asylum”
Commission Staff Working Document [COM]: 24 - 24 (0)

“In the current context of coronavirus pandemic, it is important that measures are taken to avoid a humanitarian crisis and ensure that the EU puts in place long-term solutions and strong solidarity on asylum measures.”
Commission Staff Working Document [COM]: 24 - 24 (0)

“A new, more sustainable, reliable and permanent approach to SAR, replacing existing ad hoc and voluntary solutions alone, has been also advocated by the European Parliament, international organisations and other stakeholders”
Commission Staff Working Document [COM]: 54 - 54 (0)

“That is why the New Pact has been built on careful consultations: with the European Parliament and the Council, the Member States, and with stakeholders”
New Pact on Migration and Asylum [COM]: 29 - 29 (0)

“The Commission considers that the result is a balance of interests and needs which deserves the support of all. The Commission now calls on the European Parliament and the Council to bring a new impetus. A first step should be to reach a common understanding on the new solidarity mechanism as well as the responsibility elements in the form of the new screening and border procedure by the end of this year, followed swiftly by adopting the full package of legislation required. By working together, the EU can and must ensure

due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.

			<p>that a truly common migration and asylum policy is quickly made a reality” New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p>	
<p>A2 Policy Implementation</p>		<p>The Commission argues the costs and benefits of the proposed regulation in terms of the achievability of a proper implementation by nation-states within the regulation’s scope and weighs them in favour of dis-integrative legal flexibility and soft governance approaches (see hypothesis 3, 1).</p>		<p>In addition to explicit remarks on costs, benefits, and considerations of the feasibility of successful adoption, implicit aspects are generally likewise to be coded interpretatively, since it appears likely that certain considerations cannot be mentioned <i>expressis verbis</i> by political actors, for example, due to political conformity pressure. In this respect, the analysis goes beyond a mere buzzword scan and becomes more sophisticated. For better understanding, as a minimum, entire sentences are usually encoded. Excessively repetitive coding was suspended when there was a significant amount of duplication within a document.</p>

<p>A2.1 Ex-Post Implementation Issues</p>	<p>By taking into account past implementation and compliance issues, the Commission proposes flexibility to address the problem previously encountered.</p>	<p>“Despite increased cooperation in the implementation of the Common European Asylum System (CEAS), Member States’ asylum and return systems operate mostly separately.” Commission Staff Working Document [COM]: 6 - 6 (0)</p> <p>“Some Member States offer assistance only to certain categories of irregular migrants, while others do not disseminate sufficient information about the availability of such programmes or lack appropriate funding.” Commission Staff Working Document [COM]: 7 - 7 (0)</p> <p>“Second, fragmented and voluntary ad hoc solidarity between Member States has put an disproportionate strain on Member States of first entry, threatened the political cohesion among Member States and put migrants in vulnerable situations at risk.” Commission Staff Working Document [COM]: 7 - 7 (0)</p> <p>“Until today, the relocation of asylum seekers based on the 2015 Council Decisions has been the only time Member States were obliged to offer their solidarity in terms of relocation. However, mainly because of the changing migratory flows during the implementation of the Decisions and limitations in relation to the scope of asylum seekers eligible for relocation, it was not possible for Member States’ authorities to identify the number of eligible persons foreseen in the Decisions” Commission Staff Working Document [COM]: 7 - 7 (0)</p> <p>“Since then, Member States have engaged in voluntary exercises of relocation of migrants disembarked following search and rescue (SAR) operations, e.g. the Joint Declaration</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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of Intent on a controlled emergency procedure discussed among France, Germany, Malta and Italy in September 2019, and the relocation exercise of vulnerable and unaccompanied minors from the Greek hotspots, agreed with several Member States in March 2020. However, relocation efforts have revealed several difficulties with such ad hoc and temporary formats of cooperation, with sometimes prolonged periods of time to find agreements to allow for disembarkation, and with only relatively few Member States contributing to relocation. This points to the need for a more comprehensive, effective and sustainable relocation system.”

Commission Staff Working Document [COM]: 8 - 8 (0)

“The proposal also addresses the loopholes in the existing asylum and return procedures by a new requirement to issue negative asylum decisions and return decisions together as part of the same act, allowing for only one level of appeal in a border procedure, with the same court looking at a rejection decision and return decision and with reduced possibilities during that time for an applicant to remain in the Member State.”

Commission Staff Working Document [COM]: 11 - 11 (0)

“The solution proposed responds to the need of broadening solidarity beyond the relocation of asylum seekers, and also to include the relocation of other categories of migrants and cater for a wider range of situations.”

Commission Staff Working Document [COM]: 12 - 12 (0)

“These are notably due to shortcomings in processing asylum applications efficiently; the lack of a system for fair sharing

of responsibility amongst Member States; the difficulties in dealing with migrants disembarking following SAR operations; the lack of a solidarity mechanism; and the lack of a wider toolbox for crisis management and prevention.”
Commission Staff Working Document [COM]: 20 - 20 (0)

“There are important structural weaknesses and shortcomings in the design and implementation of the European asylum and migration policy. Member States’ asylum and return systems remain largely not harmonised, thus creating inefficiencies and encouraging the movement of migrants across Europe to seek the best reception conditions and prospects for their stay”
Commission Staff Working Document [COM]: 22 - 22 (0)

“Another structural weakness of the Common European Asylum System (CEAS) is the absence of a functioning system for the fair sharing of responsibility among Member States. The current Dublin system is not aimed at ensuring the fair sharing of responsibility, but rather at objectively allocating the responsibility to examine an application for international protection to a specific Member State”
Commission Staff Working Document [COM]: 23 - 23 (0)

“Moreover, the effectiveness of this system is undermined by the fact that current rules can be abused to provide for a shift of responsibility among Member States after a given time.”
Commission Staff Working Document [COM]: 23 - 23 (0)

“The lack of an integrated approach leads to an unlevel playing field across Member States, which subsequently

hampers efforts to ensure a fair and swift process that guarantees access to procedures, equal treatment, clarity and legal certainty.”

Commission Staff Working Document [COM]: 43 - 43 (0)

“Since the peak of the crisis in 2015, the focus of discussions and actions on solidarity were almost exclusively focussed on relocation.”

Commission Staff Working Document [COM]: 51 - 51 (0)

“Nevertheless, the initially agreed number of relocations was eventually not met, in particular because of the changes in migratory flows during the implementation period.”

Commission Staff Working Document [COM]: 52 - 52 (0)

“The relocation schemes underperformed⁷⁷ mainly because Member State authorities were initially unable to identify all potential candidates for relocation and successfully channel them towards the process”

Commission Staff Working Document [COM]: 52 - 52 (0)

“On the other hand, the majority of Member States⁷⁸ have not actively engaged in relocations from Greece or Cyprus outside of those carried out under the 2015 Council Relocation Decisions, despite the requests from Greek and Cypriot authorities and the significant migratory pressure on both countries in 2019”

Commission Staff Working Document [COM]: 53 - 53 (0)

“The willingness to engage in solidarity is possibly also hampered by the fact that Member States currently lack other the means to offer solidarity support in other fields, notably

in the one of return. Ensuring successful return is a challenge for many Member States and providing for solidarity in this area could be of great assistance to Member States facing arrivals of mixed migration flows.”

Commission Staff Working Document [COM]: 53 - 53 (0)

“While there is a small but important willingness to demonstrate solidarity for persons disembarked following SAR, it is clear that relocations in the form of voluntary exercises alone are not sustainable”

Commission Staff Working Document [COM]: 53 - 53 (0)

“In addition, there are still a number of challenges putting Member States’ asylum, reception and return systems under strain. These are, in particular, the increasing proportion of asylum applicants without genuine claims, the persistent onward movements of migrants within the EU as well as the different challenges on the different migratory routes, a lack of a solidarity mechanism that can ease the pressure on Member States including on how to deal with migrants after disembarkation following SAR operations.”

Commission Staff Working Document [COM]: 69 - 69 (0)

“The proposal foresees a governance framework built on national strategies of Member States in order to ensure that sufficient capacity is in place to effectively manage asylum and migration policies, including on contingency planning.”

“Commission Staff Working Document [COM]: 71 - 71 (0)

In addition, the strain on Member States' asylum systems continues to put a heavy burden on Member States of first

arrival as well as on the asylum systems of other Member States through unauthorised movements”
Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“RESULTS OF EX-POST EVALUATIONS”
Proposal for a Asylum and Migration Management Regulation [COM]: 11 - 11 (0)

“This trend points towards applicants not applying in the first Member State of arrival, multiple applications for international protection within the EU, and the need for reform of the current Dublin system. Finally, the challenges posed by disembarkations following search and rescue operations persist. In 2019, half of all irregular arrivals by sea were disembarked following search and rescue operations putting a particular strain on certain Member States solely due to their geographical location.”
Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“The analysis highlights that there are important structural weaknesses and shortcomings in the design and implementation of the European asylum and migration policy. Member States’ asylum and return systems remain largely not harmonised, thus creating differences in the protection standards, inefficiencies in the procedures and encouraging unauthorised movements of migrants across Europe to seek better reception conditions and prospects for their stay with unwanted effects for the Schengen area.”
Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“Furthermore, the lack of a coherent EU approach on the link between termination of legal stay due to a negative asylum decision and the beginning of return procedures including requesting readmission to third countries, decreases the effectiveness of the entire migration management system.”

Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“Without this, Member States would have to rely on ad hoc agreements as in pre-Dublin times, which would make the determination of responsibility between Member States extremely difficult”

Proposal for a Asylum and Migration Management Regulation [COM]: 14 - 14 (0)

“The most significant problem highlighted in the external study commissioned by the Commission, which has also been confirmed by Member States and stakeholders in the consultations held since the Commission adopted its proposal in 2016, was the lack of consistent and correct implementation across the Member States”

Proposal for a Asylum and Migration Management Regulation [COM]: 15 - 15 (0)

“In situations of migratory pressure, where solidarity contributions indicated by Member States in the Solidarity Response Plans do not correspond to the needs identified in the assessment on migratory pressure, the Commission convenes the Solidarity Forum, which will provide an opportunity for Member States to adjust the category of their contributions in their Solidarity Response Plans”

Proposal for a Asylum and Migration Management Regulation [COM]: 22 - 22 (0)

“In order to ensure a clear and efficient relocation procedure, specific rules for a benefitting and a contributing Member State should be set out”

Proposal for a Asylum and Migration Management Regulation [COM]: 38 - 38 (0)

“In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission”

Proposal for a Asylum and Migration Management Regulation [COM]: 39 - 39 (0)

“The Commission should adopt immediately applicable implementing acts in duly justified imperative grounds of urgency due to the situation of migratory pressure present in a Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 40 - 40 (0)

“The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways”

New Pact on Migration and Asylum [COM]: 2 - 2 (0)

“And it will foster trust in EU policies by closing the existing implementation gap.”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“Common rules are essential, but they are not enough. The interdependency of Member States also makes it indispensable to ensure full, transparent and consistent implementation on the ground.”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“However, ad hoc responses cannot provide a sustainable answer and major structural weaknesses remain, both in design and implementation”

New Pact on Migration and Asylum [COM]: 4 - 4 (0)

“Inconsistencies between national asylum and return systems, as well as shortcomings in implementation, have exposed inefficiencies and raised concerns about fairness. And at the same time, the proper functioning of migration and asylum policy inside the EU also needs reinforced cooperation on migration with partners outside the EU”

New Pact on Migration and Asylum [COM]: 4 - 4 (0)

		<p>“The Commission’s previous proposals to reform the Common European Asylum System aimed to create a fair and swift process guaranteeing access to the asylum procedure, as well as equal treatment, clarity and legal certainty for asylum seekers, and addressing shortcomings on return” New Pact on Migration and Asylum [COM]: 4 - 4 (0)</p> <p>“The system therefore needs to be strengthened and loopholes closed.” New Pact on Migration and Asylum [COM]: 7 - 7 (0)</p> <p>“Key to trust in EU and national policies is consistency in implementation, requiring enhanced monitoring and operational support by EU Agencies. This includes more systematic Commission monitoring of both existing and new rules, including through infringement procedures.” New Pact on Migration and Asylum [COM]: 7 - 7 (0)</p> <p>“EU migration rules can be credible only if those who do not have the right to stay in the EU are effectively returned. Currently, only about a third of people ordered to return from Member States actually leave. This erodes citizens’ trust in the whole system of asylum and migration management and acts as an incentive for irregular migration” New Pact on Migration and Asylum [COM]: 8 - 8 (0)</p>	
<p>A2.2 Increasing Compliance / Ex- Ante</p>	<p>Potential implementation problems are anticipated and circumvented through</p>	<p>“While these measures point to a willingness of Member States to look at solidarity in a broader context and step up to assist those under major pressure, it also highlights the need for a structured and permanent framework for solidarity.” Commission Staff Working Document [COM]: 8 - 8 (0)</p>	<p>1) Explicit 2) Implicit</p>

<p>Implementation Considerations</p>	<p>corresponding policy formulation.</p>	<p>“It introduces new forms of solidarity, by widening the scope of relocation and including return sponsorship schemes through which a Member State commits to support returns from another one and, if the efforts are not successful, to transfer the irregular migrant” Commission Staff Working Document [COM]: 11 - 11 (0)</p> <p>“The solution proposed responds to the need of broadening solidarity beyond the relocation of asylum seekers, and also to include the relocation of other categories of migrants and cater for a wider range of situations.” Commission Staff Working Document [COM]: 12 - 12 (0)</p> <p>“The challenges described thus far can only be addressed by making the European asylum and migration system more efficient, comprehensive and sustainable.” Commission Staff Working Document [COM]: 71 - 71 (0)</p> <p>“The proposal foresees a governance framework built on national strategies of Member States in order to ensure that sufficient capacity is in place to effectively manage asylum and migration policies, including on contingency planning.” Commission Staff Working Document [COM]: 71 - 71 (0)</p> <p>“The monitoring under the screening would be subject to the obligation concerning the governance and monitoring of the migratory situation, resulting from the new Regulation on Asylum and Migration Management. Accordingly, Member States should integrate the results of their national monitoring mechanism established by the Screening</p>	<p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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Regulation in their national strategies foreseen in the Regulation on Asylum and Migration Management.”

Commission Staff Working Document [COM]: 73 - 73 (0)

“A structured solidarity mechanism is proposed to provide for better migration management by putting in place a system to address situations where Member States are faced with migratory pressure in order to give meaning to the principle of solidarity and a fair sharing of responsibility in the Treaty on the Functioning of the European Union.”

Commission Staff Working Document [COM]: 75 - 75 (0)

“This means broadening the scope to asylum-seekers that are not in a border procedure and to beneficiaries of international protection in order to ensure that the solidarity mechanism is more flexible and includes tools that can also deal with the realities of an increasing share of migrants that do not have protection needs.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“An approach with the built-in flexibility to choose from the measures that they would be obliged to take ensure support to Member States under migratory pressure, respecting the type of solidarity contribution indicated by individual Member States.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“This proposal provides for a new solidarity mechanism that is flexible and responsive in design in order to be adjustable to the different situations presented by the different migratory challenges faced by the Member States, by setting solidarity

measures from among which Member States can choose to contribute.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“In addition, Member States will be able to offer voluntary contributions at any time. The Commission will ensure the coordination of such measures at all times.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“Furthermore, the solidarity measures will also include new possibilities for Member States to provide assistance to each other in carrying out returns, in the form of return sponsorship. Under this new form of solidarity measure, Member States would commit to return irregular migrants on behalf of another Member State, carrying out all the activities necessary for this purpose directly from the territory of the benefitting Member State”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“This also requires proportionate material consequences in case of non-compliance with their obligations.”

Proposal for a Asylum and Migration Management Regulation [COM]: 6 - 6 (0)

“This solidarity concept should be compulsory in nature in order to be able to respond predictably and effectively to the changing realities with an increasing share of mixed migration flows towards the Union, and to ensure fair sharing of responsibility in line with the Treaty.”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“The challenges related to the current Dublin system’s rules on responsibility are addressed through a number of measures in the new proposal. Some of these were already proposed in 2016, and some are based on the current Dublin rules.”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“This would further provide efficiency to the asylum system by preventing misuse and would reduce the overall costs”

Proposal for a Asylum and Migration Management Regulation [COM]: 14 - 14 (0)

“Member States understood the need for progress in solving the weaknesses of the current system, the need for a new system of fair sharing of responsibility to which all Member States would be under the obligation to contribute, strong border protection, importance of the external dimension of migration, and improved returns.”

Proposal for a Asylum and Migration Management Regulation [COM]: 15 - 15 (0)

“The main amendments made intend to, on the one hand, improve the efficiency of the system, notably by reinforcing the responsibility of a given Member State for examining an application for international protection, once that responsibility has been established. On the other hand, the amendments serve to limit unauthorised movements, in

particular by deleting certain rules on cessation or shift of responsibility between Member States”

Proposal for a Asylum and Migration Management Regulation [COM]: 18 - 18 (0)

“The solidarity mechanism is flexible in design so that it can be applied to situations with different migratory flows and realities.”

Proposal for a Asylum and Migration Management Regulation [COM]: 19 - 19 (0)

“The proposed Regulation includes the possibility for Member States to choose to provide their solidarity contribution in the form of return sponsorship. Under return sponsorship, a Member State commits to support a Member State under migratory pressure by carrying out the necessary activities to return individually identified illegally staying third-country nationals from the territory of a Member State benefitting from a compulsory solidarity measure, in close coordination.”

Proposal for a Asylum and Migration Management Regulation [COM]: 19 - 19 (0)

“In order to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies, there is a need for integrated policy-making in the field of asylum and migration management, including both its internal and external components, which is part of the comprehensive approach”

Proposal for a Asylum and Migration Management Regulation [COM]: 29 - 29 (0)

“Such a mechanism should provide for different types of solidarity measures and should be flexible and able to adapt to the evolving nature of the migratory challenges facing a Member State”

Proposal for a Asylum and Migration Management Regulation [COM]: 30 - 30 (0)

“The solidarity mechanism should include measures to promote a fair sharing of responsibility and a balance of effort between Member States also in the area of return”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“Where Member States are themselves benefitting Member States they should not be obliged to make solidarity contributions to other Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“In order to ensure a clear and efficient relocation procedure, specific rules for a benefitting and a contributing Member State should be set out”

Proposal for a Asylum and Migration Management Regulation [COM]: 38 - 38 (0)

“In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission”

Proposal for a Asylum and Migration Management Regulation [COM]: 39 - 39 (0)

“The Commission should adopt immediately applicable implementing acts in duly justified imperative grounds of urgency due to the situation of migratory pressure present in a Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 40 - 40 (0)

“The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.”

Proposal for a Asylum and Migration Management Regulation [COM]: 40 - 40 (0)

“The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“Common rules are essential, but they are not enough. The interdependency of Member States also makes it indispensable to ensure full, transparent and consistent implementation on the ground.”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“Inconsistencies between national asylum and return systems, as well as shortcomings in implementation, have

exposed inefficiencies and raised concerns about fairness. And at the same time, the proper functioning of migration and asylum policy inside the EU also needs reinforced cooperation on migration with partners outside the EU”
New Pact on Migration and Asylum [COM]: 4 - 4 (0)

“This new common framework will set out the principles and structures needed for an integrated approach for migration and asylum policy, which ensures a fair sharing of responsibility and addresses effectively mixed arrivals of persons in need of international protection and those who are not.”
New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“While each Member State would have to contribute to relocation and/or return sponsorships and a distribution key would be applied, Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply”
New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“There would also be the possibility to contribute through other forms of solidarity such as capacity building”
New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“Whilst always leaving Member States with viable alternatives to relocation, a safety net will ensure that the pressure on a Member State is effectively alleviated by relocation or return sponsorship”
New Pact on Migration and Asylum [COM]: 7 - 7 (0)

“The system therefore needs to be strengthened and loopholes closed.”

New Pact on Migration and Asylum [COM]: 7 - 7 (0)

“To be effective, border management, asylum and return policies must work well at the national level, and in the case of the integration of migrants at the local level. National policies therefore need to be coherent with the overall European approach. The new Asylum and Migration Management Regulation will seek to achieve this through closer European cooperation. It will improve planning, preparedness and monitoring at both national and EU level.”

New Pact on Migration and Asylum [COM]: 7 - 7 (0)

“A structured process would offer EU help so that Member States could assist one another in building a resilient, effective, and flexible system, with national strategies integrating asylum and return policies at national level. A European strategy would guide and support the Member States. The Commission will also prepare a report on preparedness and contingency, based on Member State reporting on an annual basis. This would bring a forward-looking perspective on addressing the risks and opportunities of migration management, to improve both the ability and the readiness to respond.”

New Pact on Migration and Asylum [COM]: 7 - 7 (0)

“The common EU system for returns should integrate return sponsorship and serve to support its successful implementation”

New Pact on Migration and Asylum [COM]: 9 - 9 (0)

		<p>“Finally, it needs the engagement and commitment of all.” New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p>	
<p>A2.3 Efficiency, Consistency, and Sustainability (ex- ante)</p>	<p>By advocating for a more efficient, consistent, and sustainable regulatory framework, the new legislative text is promoted and predicted to be able of being reasonably implemented ex-ante.</p>	<p>“Importantly, the lack of a fair and effective migration system hinders the access of migrants to the asylum procedure, equal treatment in all Member States as regards the procedural safeguards for asylum-seekers' rights and legal certainty of asylum decisions.” Commission Staff Working Document [COM]: 9 - 9 (0)</p> <p>“It provides a comprehensive approach to migration management, including a new and wider approach to solidarity, in particular to address in a meaningful way situations where Member States are faced with migratory pressure and to take into account the specificities of search and rescue operations.” Commission Staff Working Document [COM]: 10 - 10 (0)</p> <p>“The proposed system provides for a governance and monitoring structure based on Member States' reports on the implementation of the common framework, which will feed into a new European Strategy on Asylum and Migration Management. This will allow for comprehensive view of the situation at EU level and an early identification of gaps that require solidarity contributions” Commission Staff Working Document [COM]: 10 - 10 (0)</p> <p>“The Commission believes that the developments and challenges described in this paper can only be addressed by making the European asylum and migration system more efficient, comprehensive and sustainable” Commission Staff Working Document [COM]: 16 - 16 (0)</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

“The challenges described thus far can only be addressed by making the European asylum and migration system more efficient, comprehensive and sustainable.”

Commission Staff Working Document [COM]: 71 - 71 (0)

“Furthermore, widening the scope of the proposal will also enable a tangible and effective response to migratory pressure based on a wider toolbox of solidarity measures.”

Commission Staff Working Document [COM]: 71 - 71 (0)

“Based on the overarching principles of solidarity and a fair sharing of responsibility, the New Pact advocates integrated policy-making bringing together policies in the areas of asylum, migration, return, external border protection, the fight against migrants’ smuggling and relations with key third countries reflecting a whole of government approach.”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“This new approach anchors the existing system in a wider framework that is able to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“A comprehensive approach to migration management is required to build mutual trust between Member States, to ensure the consistency of the EU approach on asylum, migration management, external border protection and relations with relevant third countries, whilst recognising

that the effectiveness of the overall approach depends on all components being jointly addressed and in an integrated manner”

Proposal for a Asylum and Migration Management Regulation [COM]: 5 - 5 (0)

“enhance the system's capacity to determine efficiently and effectively a single Member State responsible for examining an application for international protection”

Proposal for a Asylum and Migration Management Regulation [COM]: 6 - 6 (0)

“In addition, consistency is ensured with the effective European integrated border management at Union and national level as defined in the Regulation on the European Border and Coast Guard”

Proposal for a Asylum and Migration Management Regulation [COM]: 6 - 6 (0)

“These provisions do not go beyond what is necessary to achieve the objective of addressing the situation effectively.”

Proposal for a Asylum and Migration Management Regulation [COM]: 10 - 10 (0)

“These challenges can only be addressed by making the European asylum and migration system more efficient, comprehensive and sustainable by viewing the EU’s migration management as a set of interlocking policies based on integrated policy-making and rules, where the effectiveness and shortcomings of each single part affect the system as a whole”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“This solidarity concept should be compulsory in nature in order to be able to respond predictably and effectively to the changing realities with an increasing share of mixed migration flows towards the Union, and to ensure fair sharing of responsibility in line with the Treaty.”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“The challenges related to the current Dublin system’s rules on responsibility are addressed through a number of measures in the new proposal. Some of these were already proposed in 2016, and some are based on the current Dublin rules.”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“This would further provide efficiency to the asylum system by preventing misuse and would reduce the overall costs”

Proposal for a Asylum and Migration Management Regulation [COM]: 14 - 14 (0)

“The main amendments made intend to, on the one hand, improve the efficiency of the system, notably by reinforcing the responsibility of a given Member State for examining an application for international protection, once that responsibility has been established. On the other hand, the amendments serve to limit unauthorised movements, in particular by deleting certain rules on cessation or shift of responsibility between Member States”

Proposal for a Asylum and Migration Management Regulation [COM]: 18 - 18 (0)

“With the aims of ensuring that the procedure for determining responsibility for examining an application for international protection operates smoothly and in a sustainable way, that it fulfils the aim of quick access to the examination procedure and to protection for those in need of it, and that unauthorised movements are discouraged, a number of improvements to the system are proposed”

Proposal for a Asylum and Migration Management Regulation [COM]: 24 - 24 (0)

“Such a mechanism should provide for different types of solidarity measures and should be flexible and able to adapt to the evolving nature of the migratory challenges facing a Member State”

Proposal for a Asylum and Migration Management Regulation [COM]: 30 - 30 (0)

“A new, durable European framework is needed, to manage the interdependence between Member States’ 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: one that can provide certainty, clarity and decent conditions for the men, women and children arriving in the EU, and that can also allow Europeans to trust that migration is managed in an effective and humane way, fully in line with our values.”

New Pact on Migration and Asylum [COM]: 2 - 2 (0)

“The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“Common rules are essential, but they are not enough. The interdependency of Member States also makes it indispensable to ensure full, transparent and consistent implementation on the ground.”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“Inconsistencies between national asylum and return systems, as well as shortcomings in implementation, have exposed inefficiencies and raised concerns about fairness. And at the same time, the proper functioning of migration and asylum policy inside the EU also needs reinforced cooperation on migration with partners outside the EU”

New Pact on Migration and Asylum [COM]: 4 - 4 (0)

“This new common framework will set out the principles and structures needed for an integrated approach for migration and asylum policy, which ensures a fair sharing of responsibility and addresses effectively mixed arrivals of persons in need of international protection and those who are not.”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“This includes a new solidarity mechanism to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations, and ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole. Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“While each Member State would have to contribute to relocation and/or return sponsorships and a distribution key would be applied, Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“While the current criteria for determining responsibility will continue to apply, the rules on responsibility for examining an application for international protection should be refined to make the system more efficient, discourage abuses and prevent unauthorised movements.”

New Pact on Migration and Asylum [COM]: 7 - 7 (0)

“To be effective, border management, asylum and return policies must work well at the national level, and in the case of the integration of migrants at the local level. National policies therefore need to be coherent with the overall

			<p>European approach. The new Asylum and Migration Management Regulation will seek to achieve this through closer European cooperation. It will improve planning, preparedness and monitoring at both national and EU level.” New Pact on Migration and Asylum [COM]: 7 - 7 (0)</p> <p>“In this way the Agency can realise its full potential to support return, linking up operational cooperation with Member States and effective readmission cooperation with third countries.” New Pact on Migration and Asylum [COM]: 9 - 9 (0)</p> <p>“This New Pact on Migration and Asylum sets out the end-to-end approach needed to make migration management in Europe fair, efficient and sustainable.” New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p>	
	<p>A2.4 Trust-building (ex-ante)</p>	<p>Trust-building considerations are needed to achieve common ground for a proper implementation of all addressees of the legislation.</p>	<p>“The proposed system provides for a governance and monitoring structure based on Member States’ reports on the implementation of the common framework, which will feed into a new European Strategy on Asylum and Migration Management. This will allow for comprehensive view of the situation at EU level and an early identification of gaps that require solidarity contributions” Commission Staff Working Document [COM]: 10 - 10 (0)</p> <p>“A comprehensive approach to migration management is required to build mutual trust between Member States, to ensure the consistency of the EU approach on asylum, migration management, external border protection and relations with relevant third countries, whilst recognising that the effectiveness of the overall approach depends on all</p>	<p>1) Explicit 2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been</p>

components being jointly addressed and in an integrated manner”

Proposal for a Asylum and Migration Management Regulation [COM]: 5 - 5 (0)

“To this end, a comprehensive approach is required with the objective of reinforcing mutual trust between Member States which should bring together policy in the areas of asylum and migration management and towards relations with relevant third countries, recognising that the effectiveness of such an approach depends on all components being jointly addressed and in an integrated manner.”

Proposal for a Asylum and Migration Management Regulation [COM]: 28 - 28 (0)

“And it will foster trust in EU policies by closing the existing implementation gap.”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“Key to trust in EU and national policies is consistency in implementation, requiring enhanced monitoring and operational support by EU Agencies. This includes more systematic Commission monitoring of both existing and new rules, including through infringement procedures.”

New Pact on Migration and Asylum [COM]: 7 - 7 (0)

“EU migration rules can be credible only if those who do not have the right to stay in the EU are effectively returned. Currently, only about a third of people ordered to return from Member States actually leave. This erodes citizens’ trust in the whole system of asylum and migration management and acts as an incentive for irregular migration”

separated for analytical purposes only.

		New Pact on Migration and Asylum [COM]: 8 - 8 (0)	
<p>A2.5 Addressing Member States' Reasons for Non-Compliance (ex-post and ex-ante)</p>	<p>By addressing and taking into account the reasons for member states not to adhere to previous policies (ex-post) and to implement them insufficiently, implementation issues are to be avoided with a view to the future (ex-ante).</p>	<p>“Some Member States offer assistance only to certain categories of irregular migrants, while others do not disseminate sufficient information about the availability of such programmes or lack appropriate funding.” Commission Staff Working Document [COM]: 7 - 7 (0)</p> <p>“Until today, the relocation of asylum seekers based on the 2015 Council Decisions has been the only time Member States were obliged to offer their solidarity in terms of relocation. However, mainly because of the changing migratory flows during the implementation of the Decisions and limitations in relation to the scope of asylum seekers eligible for relocation, it was not possible for Member States' authorities to identify the number of eligible persons foreseen in the Decisions” Commission Staff Working Document [COM]: 7 - 7 (0)</p> <p>“Since then, Member States have engaged in voluntary exercises of relocation of migrants disembarked following search and rescue (SAR) operations, e.g. the Joint Declaration of Intent on a controlled emergency procedure discussed among France, Germany, Malta and Italy in September 2019, and the relocation exercise of vulnerable and unaccompanied minors from the Greek hotspots, agreed with several Member States in March 2020. However, relocation efforts have revealed several difficulties with such ad hoc and temporary formats of cooperation, with sometimes prolonged periods of time to find agreements to allow for disembarkation, and with only relatively few</p>	<p>1) Explicit 2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

Member States contributing to relocation. This points to the need for a more comprehensive, effective and sustainable relocation system.”

Commission Staff Working Document [COM]: 8 - 8 (0)

“A third challenge concerns the lack of effective rules for sharing responsibility for asylum applicants across the EU”

Commission Staff Working Document [COM]: 8 - 8 (0)

“These procedural inefficiencies of the current Dublin system also create a significant administrative burden on Member State’s asylum and reception systems”

Commission Staff Working Document [COM]: 8 - 8 (0)

“Importantly, the lack of a fair and effective migration system hinders the access of migrants to the asylum procedure, equal treatment in all Member States as regards the procedural safeguards for asylum-seekers' rights and legal certainty of asylum decisions.”

Commission Staff Working Document [COM]: 9 - 9 (0)

“It provides a comprehensive approach to migration management, including a new and wider approach to solidarity, in particular to address in a meaningful way situations where Member States are faced with migratory pressure and to take into account the specificities of search and rescue operations.”

Commission Staff Working Document [COM]: 10 - 10 (0)

“The proposed system provides for a governance and monitoring structure based on Member States’ reports on the implementation of the common framework, which will feed

into a new European Strategy on Asylum and Migration Management. This will allow for comprehensive view of the situation at EU level and an early identification of gaps that require solidarity contributions”

Commission Staff Working Document [COM]: 10 - 10 (0)

“It introduces new forms of solidarity, by widening the scope of relocation and including return sponsorship schemes through which a Member State commits to support returns from another one and, if the efforts are not successful, to transfer the irregular migrant”

Commission Staff Working Document [COM]: 11 - 11 (0)

“The solution proposed responds to the need of broadening solidarity beyond the relocation of asylum seekers, and also to include the relocation of other categories of migrants and cater for a wider range of situations.”

Commission Staff Working Document [COM]: 12 - 12 (0)

“These are notably due to shortcomings in processing asylum applications efficiently; the lack of a system for fair sharing of responsibility amongst Member States; the difficulties in dealing with migrants disembarking following SAR operations; the lack of a solidarity mechanism; and the lack of a wider toolbox for crisis management and prevention.”

Commission Staff Working Document [COM]: 20 - 20 (0)

“Member States engaged actively in these consultations, presenting their ideas and suggestions for the upcoming proposals, with common ground emerging on the need for unity, for gradual progress in solving the weaknesses of the current system, for a new system of fair sharing of

responsibility to which all Member States can contribute, for strong border protection, and on the importance of the external dimension of migration and improved returns”

Commission Staff Working Document [COM]: 25 - 25 (0)

“The fresh and comprehensive approach to migration management includes a new way of burden sharing. The Commission’s intention of finding new forms of solidarity was welcomed at several instances.”

Commission Staff Working Document [COM]: 25 - 25 (0)

“In these discussions, using leverage from other policy areas emerged as a necessary element to improve cooperation with third countries, as did the need to enhance assisted voluntary return schemes and tools to increase take up by returnees and to ensure sustainable reintegration in countries of origin, the need to promote a more strategic and better coordinated approach to readmission, through wider political engagement, effective procedures and operational capacity”

Commission Staff Working Document [COM]: 26 - 26 (0)

“The lack of an integrated approach leads to an unlevel playing field across Member States, which subsequently hampers efforts to ensure a fair and swift process that guarantees access to procedures, equal treatment, clarity and legal certainty.”

Commission Staff Working Document [COM]: 43 - 43 (0)

“Since the peak of the crisis in 2015, the focus of discussions and actions on solidarity were almost exclusively focussed on relocation.”

Commission Staff Working Document [COM]: 51 - 51 (0)

“The relocation schemes underperformed⁷⁷ mainly because Member State authorities were initially unable to identify all potential candidates for relocation and successfully channel them towards the process”

Commission Staff Working Document [COM]: 52 - 52 (0)

“In addition, since 2018, a number of Member States demonstrated willingness to engage in solidarity by undertaking further relocations on a voluntary basis.”

Commission Staff Working Document [COM]: 52 - 52 (0)

“The willingness to engage in solidarity is possibly also hampered by the fact that Member States currently lack other the means to offer solidarity support in other fields, notably in the one of return. Ensuring successful return is a challenge for many Member States and providing for solidarity in this area could be of great assistance to Member States facing arrivals of mixed migration flows.”

Commission Staff Working Document [COM]: 53 - 53 (0)

“Negotiations in the Council on the 2016 proposal for a Dublin Regulation did not lead to an agreement among Member States due to divergent views on the balance between responsibility and solidarity. Issues such as relocation following mathematical calculations of pressure, the necessity of Member States of first entry to undertake an admissibility assessment and the stable responsibility proved to be the most difficult issues.”

Commission Staff Working Document [COM]: 58 - 58 (0)

“In addition, there are still a number of challenges putting Member States’ asylum, reception and return systems under strain. These are, in particular, the increasing proportion of asylum applicants without genuine claims, the persistent onward movements of migrants within the EU as well as the different challenges on the different migratory routes, a lack of a solidarity mechanism that can ease the pressure on Member States including on how to deal with migrants after disembarkation following SAR operations.”

Commission Staff Working Document [COM]: 69 - 69 (0)

“The proposal foresees a governance framework built on national strategies of Member States in order to ensure that sufficient capacity is in place to effectively manage asylum and migration policies, including on contingency planning.”

Commission Staff Working Document [COM]: 71 - 71 (0)

“A structured solidarity mechanism is proposed to provide for better migration management by putting in place a system to address situations where Member States are faced with migratory pressure in order to give meaning to the principle of solidarity and a fair sharing of responsibility in the Treaty on the Functioning of the European Union.”

Commission Staff Working Document [COM]: 75 - 75 (0)

“This means broadening the scope to asylum-seekers that are not in a border procedure and to beneficiaries of international protection in order to ensure that the solidarity mechanism is more flexible and includes tools that can also deal with the realities of an increasing share of migrants that do not have protection needs.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“An approach with the built-in flexibility to choose from the measures that they would be obliged to take ensure support to Member States under migratory pressure, respecting the type of solidarity contribution indicated by individual Member States.”

Commission Staff Working Document [COM]: 76 - 76 (0)

“This new approach anchors the existing system in a wider framework that is able to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 2 - 2 (0)

“In addition, Member States will be able to offer voluntary contributions at any time. The Commission will ensure the coordination of such measures at all times.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“The Commission and the Council will then consider any appropriate further actions to be implemented in that respect, within the limits of their respective competencies.”

Proposal for a Asylum and Migration Management Regulation [COM]: 3 - 3 (0)

“In order to support solidarity measures focused on relocation and the subsequent transfers, in addition to the transfers covered by the procedures for determination of responsibility of Member States, this proposal foresees lump sums to be

paid to Member States and is fully consistent with the EU budget to incentivise such measures and the efficient application of the Regulation”

Proposal for a Asylum and Migration Management Regulation [COM]: 8 - 8 (0)

“This proposal further strengthens policies in the field of security.”

Proposal for a Asylum and Migration Management Regulation [COM]: 8 - 8 (0)

“Therefore, the proposal also reinforces the security objective provided for in the proposal for a Screening Regulation, under which such a security check will be mandatory.”

Proposal for a Asylum and Migration Management Regulation [COM]: 8 - 8 (0)

“This trend points towards applicants not applying in the first Member State of arrival, multiple applications for international protection within the EU, and the need for reform of the current Dublin system. Finally, the challenges posed by disembarkations following search and rescue operations persist. In 2019, half of all irregular arrivals by sea were disembarked following search and rescue operations putting a particular strain on certain Member States solely due to their geographical location.”

Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“The evidence paper further highlights that the lack of a sustainable system which works for all Member States has consequences for the possibility to ensure immediate and real

reactivity to external factors. Namely, there is no structured solidarity mechanism in the current Dublin system or in the CEAS in general, even though the pressure on individual Member States can vary greatly and shift suddenly and in an unpredictable way.”

Proposal for a Asylum and Migration Management Regulation [COM]: 12 - 12 (0)

“This solidarity concept should be compulsory in nature in order to be able to respond predictably and effectively to the changing realities with an increasing share of mixed migration flows towards the Union, and to ensure fair sharing of responsibility in line with the Treaty.”

Proposal for a Asylum and Migration Management Regulation [COM]: 13 - 13 (0)

“This would further provide efficiency to the asylum system by preventing misuse and would reduce the overall costs”

Proposal for a Asylum and Migration Management Regulation [COM]: 14 - 14 (0)

“The hierarchy of criteria as set out in the Dublin III Regulation does not take into account the realities faced by the migration systems of the Member States, nor does it aim for a balance of efforts.”

Proposal for a Asylum and Migration Management Regulation [COM]: 15 - 15 (0)

“The proposal retains the link between responsibility in the field of asylum and the respect by Member States of their obligations to protect the external border, taking into account international obligations of carrying out search and rescue

operations, subject to exceptions designed to protect family life and the best interests of the child”

Proposal for a Asylum and Migration Management Regulation [COM]: 18 - 18 (0)

“The solidarity mechanism is flexible in design so that it can be applied to situations with different migratory flows and realities. Solidarity contributions that Member States will be under the obligation to provide consist of either relocation or return sponsorship and there is also the possibility to contribute to measures aimed at strengthening the capacity of Member States in the field of asylum, reception and return and in the external dimension.”

Proposal for a Asylum and Migration Management Regulation [COM]: 19 - 19 (0)

“The proposed Regulation includes the possibility for Member States to choose to provide their solidarity contribution in the form of return sponsorship. Under return sponsorship, a Member State commits to support a Member State under migratory pressure by carrying out the necessary activities to return individually identified illegally staying third-country nationals from the territory of a Member State benefitting from a compulsory solidarity measure, in close coordination.”

Proposal for a Asylum and Migration Management Regulation [COM]: 19 - 19 (0)

“In the field of return, such measures could include, for instance, the financial or other assistance focussed on infrastructure and facilities that may be necessary to improve the enforcement of returns or providing material or transport

means for carrying out operations. Where the Commission assesses that they are proportionate to the share of the Member State and in line with the objectives set out in the Asylum and Migration Fund, these contributions will be specified in the implementing act”

Proposal for a Asylum and Migration Management Regulation [COM]: 21 - 21 (0)

“The proposal provides for financial incentives for relocation.”

Proposal for a Asylum and Migration Management Regulation [COM]: 23 - 23 (0)

“Member States should have sufficient human and financial resources and infrastructure to effectively implement asylum and migration management policies and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 29 - 29 (0)

“Those Member States should also be able to rely on the use of the ‘solidarity pool’ for the relocation of vulnerable persons”

Proposal for a Asylum and Migration Management Regulation [COM]: 30 - 30 (0)

“The overall contribution of each Member State to the solidarity pool should be determined through indications by Member States of the measures by which they wish to contribute.”

Proposal for a Asylum and Migration Management Regulation [COM]: 31 - 31 (0)

“The solidarity mechanism should include measures to promote a fair sharing of responsibility and a balance of effort between Member States also in the area of return”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“Where Member States are themselves benefitting Member States they should not be obliged to make solidarity contributions to other Member States.”

Proposal for a Asylum and Migration Management Regulation [COM]: 32 - 32 (0)

“The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways. It unearthed genuine concerns, and brought to the surface differences which need to be acknowledged and overcome”

New Pact on Migration and Asylum [COM]: 2 - 2 (0)

“The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and

promote mutual trust by delivering results through effective implementation”

New Pact on Migration and Asylum [COM]: 3 - 3 (0)

“This includes a new solidarity mechanism to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations, and ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole. Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“While each Member State would have to contribute to relocation and/or return sponsorships and a distribution key would be applied, Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply”


New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“There would also be the possibility to contribute through other forms of solidarity such as capacity building”

New Pact on Migration and Asylum [COM]: 6 - 6 (0)

“Whilst always leaving Member States with viable alternatives to relocation, a safety net will ensure that the pressure on a Member State is effectively alleviated by relocation or return sponsorship”

New Pact on Migration and Asylum [COM]: 7 - 7 (0)

	<p>“That is why the New Pact has been built on careful consultations: with the European Parliament and the Council, the Member States, and with stakeholders” New Pact on Migration and Asylum [COM]: 29 - 29 (0)</p>	
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Coding Table B – Council and Member States' Positions

Category	Sub-Categories	Definition/Criteria	Coded Segments in Data Material	Coding Rule(s)
<p>B1 Policy Adoption</p>		<p>Under this superordinate category, segments are coded which provide <i>inter alia</i> information on questions of the adoption of corresponding flexible solidarity and which interests play an active role from the point of view of the member states if they, in the guise of the Council as the representative of national governments, approve the proposed regulation.</p>		<p>In addition to explicit remarks on policy adoption, implicit aspects are generally likewise to be coded interpretatively, since it appears likely that certain considerations cannot be mentioned <i>expressis verbis</i> by political actors, for example, due to political conformity pressure. In this respect, the analysis goes beyond a mere buzzword scan and becomes more sophisticated. For better understanding, as a minimum, entire sentences are usually encoded. Excessively repetitive coding was suspended when there was a significant amount of duplication within a document.</p>
	<p>B1.1</p>	<p>Voluntariness and flexibility of measures in</p>	<p>“Romania has always adopted a position of balance and support for the principle of solidarity, but has opposed the mandatory and automatic nature of relocation, signalling a substantive reservation on this issue, as solidarity cannot be</p>	<p>1) Explicit</p>

<p>Voluntariness of Measures</p>	<p>the context of the Common European Asylum System, especially on issues with re-distributive elements, are to be expected, based on existing literature that has extensively studied nation-state behavioural dispositions in this policy field.</p>	<p>expressed on the basis of indicators and imposed calculation formulars which do not take into account the objective situation of each Member State.” Council and Member States' Position\Opinion of the Senate of Romania [MS]: 2: 103 630 - 2: 572 701 (0)</p> <p>“indeed, the proposals show a manifest asymmetry between the mandatory procedures that the states of first entry must implement at the external borders, including pre-entry ones, which aim to prevent secondary movements, and the flexible solidarity solutions, whose compulsoriness for the other Member States is not so certain;” Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 4 - 4 (0)</p> <p>“from this standpoint, the proposals for reforming the current European system do not alter the issues currently stemming from the enforcement of the principle of responsibility of the state of first entry (which still stands), nor do they therefore provide ‘added value’ to the action taken at EU level – itself a crucial element for ensuring compliance with the principle of subsidiarity – which can only be guaranteed in the presence of mechanisms capable of effectively sharing the burdens borne by the states of first entry, including the actual compulsoriness of relocation of migrants to other Member States” Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 4 - 4 (0)</p> <p>“as a matter of fact, the new solidarity mechanism the proposals envisage is totally unfit for sharing the responsibility burdens of the states of first entry”</p>	<p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 5 - 5 (0)

“infringes the principles of necessity and proportionality in that it prescribes a solidarity contribution determined based on an artificial distribution key, while for part of this it limits the decision solely to relocation and return sponsorship”

Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)

“Hungary agrees with creating the mandatory solidarity mechanism, but it must be based on a voluntary choice adjusted to the individual capabilities of the Member States and with due consideration of their national circumstances”

Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 11 - 11 (0)

“Where a Member State is under pressure, it should not be obliged to apply mandatory stringent procedures and to respect very short deadlines as it could be the case in normal circumstances”

Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 1 - 1 (0)

“The pre-Dublin checks should be optional both in normal and challenging circumstances.”

Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 1 - 1 (0)

“However, the Council reiterates its view that Article 80 TFEU does not constitute a legal basis within the meaning of EU law”

			<p>Council and Member States' Position\Statement by the Council on Article 80 TFEU [COUNCIL]: 1 - 1 (0)</p> <p>“The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, supports the final text; however it notes that this is without prejudice to its right of initiative with regard to the choice of legal bases, in particular in reference to the future use of Article 80 TFEU.”</p> <p>Council and Member States' Position\Statement by the Council on Article 80 TFEU [COUNCIL]: 2 - 2 (0)</p>	
	<p>B1.2 Touching Core State Powers</p>	<p>Migration issues, and in particular more difficult-to-predict violence-induced migration, touch on issues of so-called core state power, which is an important decision-making criterion for national governments, as it is the core of their competence tools.</p>	<p>“Romania has always adopted a position of balance and support for the principle of solidarity, but has opposed the mandatory and automatic nature of relocation, signalling a substantive reservation on this issue, as solidarity cannot be expressed on the basis of indicators and imposed calculation formulas which do not take into account the objective situation of each Member State.”</p> <p>Council and Member States' Position\Opinion of the Senate of Romania [MS]: 2: 103 630 - 2: 572 701 (0)</p> <p>“from this standpoint, the proposals for reforming the current European system do not alter the issues currently stemming from the enforcement of the principle of responsibility of the state of first entry (which still stands), nor do they therefore provide ‘added value’ to the action taken at EU level – itself a crucial element for ensuring compliance with the principle of subsidiarity – which can only be guaranteed in the presence of mechanisms capable of effectively sharing the burdens borne by the states of first entry, including the actual compulsoriness of relocation of migrants to other Member States”</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 4 - 4 (0)

“On this basis the proposed regulations do not take account of the special circumstances and national characteristics of the individual Member States;”

Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)

“instead of strengthening the fight against illegal migration the Pact focuses primarily on managing migration, thereby jeopardising the security of EU citizens”

Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)

“the Pact promises a comprehensive approach to solidarity and the fair sharing of responsibility, but pays less attention to the individual features of Member States.”

Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)

“However, the goal of a border procedure is essentially reversed in the Proposal; it does not strive to prevent people from entering who in all likelihood are not entitled to international protection, but instead it seeks to have the majority of applications substantially decided at the border as quickly as possible; also infringes the principle of subsidiarity because in order to help the Member State under pressure, when the solidarity mechanism is activated it would broaden the scope of persons subject to mandatory relocation to include those granted immediate protection and return sponsorship as well;”

		<p>Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 12 - 12 (0)</p>	
<p>B1.3 National Adoption Capacity</p>	<p>Questions of national decision-making power in connection with issues addressed by the proposed regulation are discussed and a plea is made for as free a choice of regulatory framework as possible.</p>	<p>“On this basis the proposed regulations do not take account of the special circumstances and national characteristics of the individual Member States;” Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)</p> <p>“the Pact promises a comprehensive approach to solidarity and the fair sharing of responsibility, but pays less attention to the individual features of Member States.” Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)</p> <p>“infringes the principles of necessity and proportionality in that it prescribes a solidarity contribution determined based on an artificial distribution key, while for part of this it limits the decision solely to relocation and return sponsorship” Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)</p> <p>“infringes the principle of subsidiarity when it interprets the solidarity and fair sharing of responsibility under Article 80 TFEU too broadly, going beyond the aspects that Member States could achieve sufficiently by themselves or which are already governed by EU law” Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 12 - 12 (0)</p> <p>“further limits the decision-making powers of Member States with the provisions on the mandatory application of</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

relocation and return sponsorship, contrary to the subsidiarity requirement.”
 Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 12 - 12 (0)

“However, the goal of a border procedure is essentially reversed in the Proposal; it does not strive to prevent people from entering who in all likelihood are not entitled to international protection, but instead it seeks to have the majority of applications substantially decided at the border as quickly as possible; also infringes the principle of subsidiarity because in order to help the Member State under pressure, when the solidarity mechanism is activated it would broaden the scope of persons subject to mandatory relocation to include those granted immediate protection and return sponsorship as well;”
 Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 12 - 12 (0)

“Hungary believes that in crisis situations the European Council is responsible for decisions on necessary measures;”
 Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 12 - 12 (0)

“Where a Member State is in challenging circumstances in parallel with other support measures, it would be beneficial to temporarily suspend take back requests, unless the requesting Member State is itself under challenging circumstances.”
 Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 1 - 1 (0)

			<p>“In Article 19 the possibility should be foreseen for a Member State to directly return the applicant present on its territory to the safe country of origin or to a safe third country instead of submitting a take-back request to the Member State responsible.” Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 2 - 2 (0)</p> <p>“The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, supports the final text; however it notes that this is without prejudice to its right of initiative with regard to the choice of legal bases, in particular in reference to the future use of Article 80 TFEU.” Council and Member States' Position\Statement by the Council on Article 80 TFEU [COUNCIL]: 2 - 2 (0)</p>	
<p>B2 Policy Implementation</p>		<p>Under this superordinate category, segments are coded which provide <i>inter alia</i> information on questions of the implementation of corresponding flexible solidarity and which interests play an active role from the point of view of the member states if they,</p>		<p>In addition to explicit remarks on policy implementation, implicit aspects are generally likewise to be coded interpretatively, since it appears likely that certain considerations cannot be mentioned <i>expressis verbis</i> by political actors, for example, due to political conformity pressure. In this respect, the analysis goes beyond a mere buzzword scan and becomes more</p>

		<p>in the guise of the Council as the representative of national governments, approve the proposed regulation.</p>		<p>sophisticated. For better understanding, as a minimum, entire sentences are usually encoded. Excessively repetitive coding was suspended when there was a significant amount of duplication within a document.</p>
	<p>B2.1 National Discretion Necessary</p>	<p>Maximum freedom of choice for national authorities in dealing with refugees and the implementation of violence-induced migration law.</p>	<p>“On this basis the proposed regulations do not take account of the special circumstances and national characteristics of the individual Member States;” Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)</p> <p>“the Pact promises a comprehensive approach to solidarity and the fair sharing of responsibility, but pays less attention to the individual features of Member States.” Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 10 - 10 (0)</p> <p>“infringes the principle of subsidiarity when it interprets the solidarity and fair sharing of responsibility under Article 80 TFEU too broadly, going beyond the aspects that Member States could achieve sufficiently by themselves or which are already governed by EU law” Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 12 - 12 (0)</p> <p>“However, the goal of a border procedure is essentially reversed in the Proposal; it does not strive to prevent people</p>	<p>1) Explicit 2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

from entering who in all likelihood are not entitled to international protection, but instead it seeks to have the majority of applications substantially decided at the border as quickly as possible; also infringes the principle of subsidiarity because in order to help the Member State under pressure, when the solidarity mechanism is activated it would broaden the scope of persons subject to mandatory relocation to include those granted immediate protection and return sponsorship as well;"

Council and Member States' Position\Reasoned Opinion of the National Assembly of Hungary [MS]: 12 - 12 (0)

"Member States should have the possibility to decide whether to apply the pre-Dublin checks to applicants from safe countries of origin or safe third countries."

Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 1 - 1 (0)

"Where a Member State is in challenging circumstances in parallel with other support measures, it would be beneficial to temporarily suspend take back requests, unless the requesting Member State is itself under challenging circumstances."

Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 1 - 1 (0)

"In Article 19 the possibility should be foreseen for a Member State to directly return the applicant present on its territory to the safe country of origin or to a safe third country instead of submitting a take-back request to the Member State responsible."

		<p>Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 2 - 2 (0)</p>	
<p>B2.2 Support Demanded</p>	<p>Support in financial and operational terms is required to deal with refugees in order to mitigate re-distributive implications (see also domestic considerations as described in liberal intergovernmentalism).</p>	<p>“The Bundesrat welcomes the Commission's vision of a solidarity-based distribution of responsibility for the implementation of asylum procedures among Member States based on their respective reception capacities within the framework of a common asylum and migration policy” Council and Member States' Position\Opinion of the Federal Council of Germany [MS]: 1 - 1 (0)</p> <p>“indeed, the proposals show a manifest asymmetry between the mandatory procedures that the states of first entry must implement at the external borders, including pre-entry ones, which aim to prevent secondary movements, and the flexible solidarity solutions, whose compulsoriness for the other Member States is not so certain;” Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 4 - 4 (0)</p> <p>“from this standpoint, the proposals for reforming the current European system do not alter the issues currently stemming from the enforcement of the principle of responsibility of the state of first entry (which still stands), nor do they therefore provide ‘added value’ to the action taken at EU level – itself a crucial element for ensuring compliance with the principle of subsidiarity – which can only be guaranteed in the presence of mechanisms capable of effectively sharing the burdens borne by the states of first entry, including the actual compulsoriness of relocation of migrants to other Member States” Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 4 - 4 (0)</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

“as a matter of fact, the new solidarity mechanism the proposals envisage is totally unfit for sharing the responsibility burdens of the states of first entry”
 Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 5 - 5 (0)

“The above-mentioned efforts should lead to a reduction of the “fair share”. Such a reduction should be applied only to the benefit of Member States at the external borders (its entity may be discussed).”
 Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 1 - 1 (0)

“The allocation mechanism should alleviate the burden of the Member States under pressure and for this purpose the allocation pool should not be too limited”
 Council and Member States' Position\Position Paper of Cyprus, Greece, Italy, Malta and Spain [MS]: 3 - 3 (0)

“However, we would like to underline the fact that Bulgaria is amongst the Member States that are the most affected from the recently increased refugee and migratory pressure and at the same time will receive one of the smallest national allocations under this fund. Along with the need to respond to the immediate challenges arising as regards granting adequate reception and accommodation to asylum seekers and persons requiring international protection, Bulgaria has to ensure a long-term comprehensive approach focusing also on the integration of the asylum seekers and the expected pressure on the social system: housing, social assistance, education, and health services.”

			<p>Council and Member States' Position\Statement by the Council on Article 80 TFEU [COUNCIL]: 3 - 3 (0)</p> <p>“We believe that, in the spirit of solidarity in the management of migration flows, a fair and objective solution will be found in the near future in order to support Bulgaria in coping with the difficult situation for the long term.”</p> <p>Council and Member States' Position\Statement by the Council on Article 80 TFEU [COUNCIL]: 3 - 3 (0)</p>	
	<p>B2.3 Ex-Ante Implementation Issues</p>	<p>Problems with the Commission's proposal are discussed and it is criticised that there could be future implementation problems similar to those already observed ex-post.</p>	<p>“Forms of solidarity, such as, primarily, the compulsory relocation of applicants for international protection, counterbalance the asymmetric responsibility of first arrival Member States, including disembarkation after maritime search and rescue operations resulting in large numbers of arrivals.”</p> <p>Council and Member States' Position\Opinion of the Greek Parliament's EU Committee [MS]: 4 - 4 (0)</p> <p>“Return sponsorships especially of third-country nationals not meeting the right of stay nor residence must, as a "solidarity contribution" (proposal COM (2020) 610, Article 45), be effectively organized to be processed as soon as possible, via strengthened role of FRONTEX , EUAA and the European External Action Service, in conjunction to the strengthening of EU cooperation with key third countries, as the return sponsorship process can take up to eight months, during which third-country nationals- candidates for return must remain at the border.”</p> <p>Council and Member States' Position\Opinion of the Greek Parliament's EU Committee [MS]: 7 - 7 (0)</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

“as a matter of fact, the new solidarity mechanism the proposals envisage is totally unfit for sharing the responsibility burdens of the states of first entry”

Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 5 - 5 (0)

“furthermore, relocations are expected to be ordered via provisional legal instruments (execution orders) lasting one year; no system of incentives or sanctions is in place for non-compliant Member States other than the traditional litigation procedures, which are hardly persuasive when it comes to migration policies”

Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 5 - 5 (0)

“Said procedures, which might be incompatible with the European Convention on Human Rights, would be entirely borne and performed by the states of first entry, with no mandatory burden-sharing mechanism in place, thus totally departing from the ‘spirit of Valletta’ of September 2019, which defined a solidarity system and relocation quotas for migrants reaching European territory via sea rescue operations, regardless of their status as asylum seekers”

Council and Member States' Position\Reasoned Opinion of the Italian Senate [MS]: 5 - 5 (0)

Coding Table C – European Parliament's Position

Category	Sub-Categories	Definition/Criteria	Coded Segments in Data Material	Cording Rule(s)
<p>C1 Policy Adoption</p>		<p>Under this superordinate category, segments are coded which provide <i>inter alia</i> information on questions of the adoption of corresponding flexible solidarity and which interests play an active role from the point of view of the European Parliament to approve the proposed regulation.</p>		<p>In addition to explicit remarks on policy adoption, implicit aspects are generally likewise to be coded interpretatively, since it appears likely that certain considerations cannot be mentioned <i>expressis verbis</i> by political actors, for example, due to political conformity pressure. In this respect, the analysis goes beyond a mere buzzword scan and becomes more sophisticated. For better understanding, as a minimum, entire sentences are usually encoded. Excessively repetitive coding was suspended when there was a significant amount of duplication within a document.</p>

	<p>C1.1 Solidarity as Legal Principle</p>	<p>From the perspective of the European Parliament, solidarity is understood as a legally binding principle enshrined in primary law, which justifies binding relocation measures.</p>	<p>“Article 80 TFEU puts the principle of solidarity and fair sharing of responsibility at the heart of the whole of the Union system, providing a legal basis for the implementation of these principles in the Union policies on asylum, migration and border control” European Parliament's Position\European Parliament Resolution [EP]: 8 - 8 (0)</p> <p>“solidarity can take the forms of internal and external solidarity; and whereas relocation, mutual recognition of asylum decisions, operational support measures, a pro-active interpretation of the current Dublin Regulation and the Temporary Protection Directive are all tools for internal solidarity, while resettlement, humanitarian admission and search and rescue at sea promote external solidarity, and the civil protection mechanism can target both” European Parliament's Position\European Parliament Resolution [EP]: 8 - 8 (0)</p> <p>“Points out that solidarity must be the principle upon which Union action on migration is based; notes that the principle of solidarity, as set out in Article 80 TFEU, covers asylum, immigration and border control policies; takes the view that Article 80 provides a legal basis ‘jointly’ with Articles 77-79 TFEU to implement the principle of solidarity in those areas” European Parliament's Position\European Parliament Resolution [EP]: 11 - 11 (0)</p> <p>“Recalls that the process of relocation – that is to say, transferring an applicant for international protection, or a beneficiary of international protection, from one Member</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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			<p>State to another – is a practical example of solidarity within the Union; recalls, in addition, that, since 2009, Parliament has been calling for a binding mechanism for the distribution of asylum seekers among all the Member States” European Parliament's Position\European Parliament Resolution [EP]: 12 - 13 (0)</p> <p>“Takes the view that the establishment of urgent relocation measures is a move in the right direction, and calls on Member States to fulfil their obligations with regard to those measures as soon as possible” European Parliament's Position\European Parliament Resolution [EP]: 13 - 13 (0)</p> <p>“concerned that, under the current Relocation Decisions, Member States of first arrival still have to handle the more complicated claims for international protection (and appeals), have to organise longer periods of reception, and will have to coordinate returns for those ultimately not entitled to international protection; reiterates that any new system for the management of the Common European Asylum System must be based on solidarity and a fair sharing of responsibility” European Parliament's Position\European Parliament Resolution [EP]: 13 - 13 (0)</p> <p>“changing migratory situations, which have led to complex migratory challenges and considerable migratory pressure on individual Member States along the external border of the Union, there is a need to introduce a new mechanism when a Member State is at risk of migratory pressure. Such mechanism should include a rapid and comprehensive</p>	
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			<p>response by the Commission and the Union's bodies, offices and agencies to provide the Member State concerned with operational, legal, diplomatic and financial support in order to reduce the risk of migratory pressure” European Parliament's Position\Draft Report on the Proposal [EP]: 9 - 9 (0)</p> <p>“(15a) In order to implement the mechanism, the Union should fully apply the Neighbourhood, Development and International Cooperation Instrument – Global Europe, established by Regulation(EU) 2021/947 of the European Parliament and of the Council^{38a}, with at least 10 % of the total budget of that instrument dedicated specifically to actions supporting the management and governance of migration and forced displacement” European Parliament's Position\Draft Report on the Proposal [EP]: 10 - 10 (0)</p> <p>“Starts from the premise that saving lives must be a first priority and that proper funding, at Union and Member State level, for search and rescue operations is essential; notes that there has been an increase in the number of irregular arrivals by sea and an alarming increase in the number of deaths at sea, and that a better European response is still required” European Parliament's Position\European Parliament Resolution [EP]: 11 - 11 (0)</p> <p>“Takes the view that a permanent, robust and effective Union response in search and rescue operations at sea is crucial to preventing an escalating death toll of migrants attempting to cross the Mediterranean Sea”</p>	
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			<p>European Parliament's Position\European Parliament Resolution [EP]: 11 - 11 (0)</p> <p>“Takes the view that the establishment of urgent relocation measures is a move in the right direction, and calls on Member States to fulfil their obligations with regard to those measures as soon as possible”</p> <p>European Parliament's Position\European Parliament Resolution [EP]: 13 - 13 (0)</p>	
	<p>C1.2 Supranational Approach</p>	<p>Regulation of violence-induced migration at supranational level with the involvement of the institutions Commission and Parliament.</p>	<p>“changing migratory situations, which have led to complex migratory challenges and considerable migratory pressure on individual Member States along the external border of the Union, there is a need to introduce a new mechanism when a Member State is at risk of migratory pressure. Such mechanism should include a rapid and comprehensive response by the Commission and the Union's bodies, offices and agencies to provide the Member State concerned with operational, legal, diplomatic and financial support in order to reduce the risk of migratory pressure”</p> <p>European Parliament's Position\Draft Report on the Proposal [EP]: 9 - 9 (0)</p> <p>“(15a) In order to implement the mechanism, the Union should fully apply the Neighbourhood, Development and International Cooperation Instrument – Global Europe, established by Regulation(EU) 2021/947 of the European Parliament and of the Council^{38a}, with at least 10 % of the total budget of that instrument dedicated specifically to actions supporting the management and governance of migration and forced displacement”</p> <p>European Parliament's Position\Draft Report on the Proposal [EP]: 10 - 10 (0)</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

			<p>“Starts from the premise that saving lives must be a first priority and that proper funding, at Union and Member State level, for search and rescue operations is essential; notes that there has been an increase in the number of irregular arrivals by sea and an alarming increase in the number of deaths at sea, and that a better European response is still required” European Parliament's Position\European Parliament Resolution [EP]: 11 - 11 (0)</p> <p>“Takes the view that a permanent, robust and effective Union response in search and rescue operations at sea is crucial to preventing an escalating death toll of migrants attempting to cross the Mediterranean Sea” European Parliament's Position\European Parliament Resolution [EP]: 11 - 11 (0)</p> <p>“Takes the view that the establishment of urgent relocation measures is a move in the right direction, and calls on Member States to fulfil their obligations with regard to those measures as soon as possible” European Parliament's Position\European Parliament Resolution [EP]: 13 - 13 (0)</p>	
<p>C2 Policy Implementation</p>		<p>Under this superordinate category, segments are coded which provide <i>inter alia</i> information on questions of the</p>		<p>In addition to explicit remarks on policy implementation, implicit aspects are generally likewise to be coded interpretatively, since it appears likely that certain</p>

		<p>implementation of corresponding flexible solidarity and which interests play an active role from the point of view of the European Parliament when the regulation is to be implemented by nation-states as addressees of the proposed regulation.</p>		<p>considerations cannot be mentioned <i>expressis verbis</i> by political actors, for example, due to political conformity pressure. In this respect, the analysis goes beyond a mere buzzword scan and becomes more sophisticated. For better understanding, as a minimum, entire sentences are usually encoded. Excessively repetitive coding was suspended when there was a significant amount of duplication within a document.</p>
	<p>C2.1 Robust Implementation of Solidarity</p>	<p>Monitoring and enforcement of the legal arrangements for the solidarity-based redistribution of refugees within the Common European Asylum System.</p>	<p>“changing migratory situations, which have led to complex migratory challenges and considerable migratory pressure on individual Member States along the external border of the Union, there is a need to introduce a new mechanism when a Member State is at risk of migratory pressure. Such mechanism should include a rapid and comprehensive response by the Commission and the Union's bodies, offices and agencies to provide the Member State concerned with operational, legal, diplomatic and financial support in order to reduce the risk of migratory pressure”</p>	<p>1) Explicit 2) Implicit Overlay of categories possible. A coded element may be assigned to several categories or sub-</p>

		<p>European Parliament's Position\Draft Report on the Proposal [EP]: 9 - 9 (0)</p> <p>“(15a) In order to implement the mechanism, the Union should fully apply the Neighbourhood, Development and International Cooperation Instrument – Global Europe, established by Regulation(EU) 2021/947 of the European Parliament and of the Council^{38a}, with at least 10 % of the total budget of that instrument dedicated specifically to actions supporting the management and governance of migration and forced displacement”</p> <p>European Parliament's Position\Draft Report on the Proposal [EP]: 10 - 10 (0)</p> <p>“Starts from the premise that saving lives must be a first priority and that proper funding, at Union and Member State level, for search and rescue operations is essential; notes that there has been an increase in the number of irregular arrivals by sea and an alarming increase in the number of deaths at sea, and that a better European response is still required”</p> <p>European Parliament's Position\European Parliament Resolution [EP]: 11 - 11 (0)</p> <p>“Takes the view that a permanent, robust and effective Union response in search and rescue operations at sea is crucial to preventing an escalating death toll of migrants attempting to cross the Mediterranean Sea”</p> <p>European Parliament's Position\European Parliament Resolution [EP]: 11 - 11 (0)</p>	<p>categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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			<p>“Takes the view that the establishment of urgent relocation measures is a move in the right direction, and calls on Member States to fulfil their obligations with regard to those measures as soon as possible” European Parliament's Position\European Parliament Resolution [EP]: 13 - 13 (0)</p>	
	<p>C2.2 Implementation with Supranational Institutions</p>	<p>Although national implementation is uncontested, supranational institutions and agencies should be involved in it and be given certain powers.</p>	<p>“changing migratory situations, which have led to complex migratory challenges and considerable migratory pressure on individual Member States along the external border of the Union, there is a need to introduce a new mechanism when a Member State is at risk of migratory pressure. Such mechanism should include a rapid and comprehensive response by the Commission and the Union's bodies, offices and agencies to provide the Member State concerned with operational, legal, diplomatic and financial support in order to reduce the risk of migratory pressure” European Parliament's Position\Draft Report on the Proposal [EP]: 9 - 9 (0)</p> <p>“(15a) In order to implement the mechanism, the Union should fully apply the Neighbourhood, Development and International Cooperation Instrument – Global Europe, established by Regulation(EU) 2021/947 of the European Parliament and of the Council^{38a}, with at least 10 % of the total budget of that instrument dedicated specifically to actions supporting the management and governance of migration and forced displacement” European Parliament's Position\Draft Report on the Proposal [EP]: 10 - 10 (0)</p> <p>“In order to ensure a comprehensive and effective solidarity response when the voluntary contributions indicated by the</p>	<p>1) Explicit 2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

			<p>contributing Member States do not meet the needs of a Member State under migratory pressure, the Commission should adopt an implementing act” European Parliament's Position\Draft Report on the Proposal [EP]: 17 - 17 (0)</p> <p>“The Commission shall monitor and provide information on the migratory situation through annual situational reports based on qualitative and quantitative data and information provided by the Member States, the European External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, the European Union Agency for Law Enforcement Cooperation (Europol) and the European Union Agency for Fundamental Rights. The annual reports shall set out the anticipated evolution of the migratory situation and the preparedness of the Union and the Member States. The Commission shall transmit the annual situational reports to the European Parliament and the Council” European Parliament's Position\Draft Report on the Proposal [EP]: 31 - 31 (0)</p>	
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Coding Table D – Miscellaneous

Category	Sub-Categories	Definition/Criteria	Coded Segments in Data Material	Cording Rule(s)
<p>D Miscellaneous</p>		<p>In this remaining coding table, a briefing from the European Parliamentary Research Service on the analysed proposal is coded, which discusses, among other things, considerations of the Commission and relevant positions of the co-legislators (see hypothesis 1, second half-sentence).</p>		<p>In addition to explicit remarks, implicit aspects are generally likewise to be coded interpretatively, since it appears likely that certain considerations cannot be mentioned <i>expressis verbis</i> by political actors, for example, due to political conformity pressure. In this respect, the analysis goes beyond a mere buzzword scan and becomes more sophisticated. For better understanding, as a minimum, entire sentences are usually encoded. Excessively repetitive coding was suspended when there was a significant amount of duplication within a document</p>

	<p>D1 European Commission's Considerations</p>	<p>(Potential) Commission considerations are coded here, which are disclosed by the scientific service.</p>	<p>“A major challenge faced by the EU in the area of asylum and migration is that it lacks an integrated EU-level approach, and that the Member States' asylum and return systems are not harmonized” Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 2 - 2 (0)</p> <p>“Currently, there is also no mandatory solidarity mechanism at the EU level, which would commit EU countries to supporting each other whenever they are facing major pressure. Temporary and ad hoc solidarity based on voluntary contributions by Member States, as in the case of disembarkations following SAR operations or the 2020 relocations from Greece, is difficult to manage, is unsustainable and results in an unbalanced distribution of responsibilities amongst Member States.” Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 2 - 2 (0)</p> <p>“In fact, the absence of a structured, permanent and flexible solidarity mechanism puts a disproportionate burden on the Member States of first entry, threatens the lives of migrants saved during SAR operations, and undermines trust and political cohesion among Member States.” Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 2 - 2 (0)</p> <p>“Last but not least, it is against the letter and spirit of Article 80 of the Treaty on the Functioning of the European Union (TFEU), which requires EU policies on asylum, migration and border management to be based on the fair sharing of responsibilities”</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>
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			<p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 2 - 2 (0)</p> <p>“Furthermore, there are significant structural weaknesses in the design and implementation of the Dublin system”</p> <p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 3 - 3 (0)</p>	
	<p>D2 Council and Member States’ Position</p>	<p>Since, according to hypothesis 1, not only ex-post and ex-ante, i.e. temporal considerations, are relevant, but also the position of the co-legislators, the positions of the Council and the member states examined by the scientific service are assigned here.</p>	<p>“It also puts a heavy burden on national judicial and administrative authorities. Not least, it leaves Member States inadequately prepared and lacking in capacity to respond to sudden or increased migratory pressure”</p> <p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 2 - 2 (0)</p> <p>“In fact, the absence of a structured, permanent and flexible solidarity mechanism puts a disproportionate burden on the Member States of first entry, threatens the lives of migrants saved during SAR operations, and undermines trust and political cohesion among Member States.”</p> <p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 2 - 2 (0)</p> <p>“As co-legislator on migration and asylum, the Council of the EU has had a very different view from the Parliament as regards certain CEAS aspects in general and the Dublin rules in particular. It rejects the view that Article 80 TFEU constitutes a legal basis within the meaning of EU law, and reiterates that within the TFEU chapter on policies on border checks, asylum and immigration, only Article 77(2) and (3), Article 78(2) and (3) and Article 79(2), (3) and (4) entitle the relevant EU institutions to adopt legal acts.”</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-categories, which have been separated for analytical purposes only.</p>

			<p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 4 - 4 (0)</p> <p>“Furthermore, long discussions in the Council on the reform of the Dublin Regulation, on the basis of the 2016 proposal, failed to reach an agreement on a permanent mechanism to ensure fair responsibility-sharing for asylum-seekers”</p> <p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 4 - 4 (0)</p> <p>“At its meetings, the European Council has also failed to bridge the gap between the different Member States' views, with some insisting on relocation, while others have proposed flexible solidarity (i.e. showing solidarity in ways other than taking asylum-seekers, for example, by providing more financial support).”</p> <p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 4 - 4 (0)</p>	
	<p>D3 European Parliament's Position</p>	<p>Since, according to hypothesis 1, not only ex-post and ex-ante, i.e. temporal considerations, are relevant, but also the positions of the co-legislators, the position of the Parliament examined</p>	<p>“Currently, there is also no mandatory solidarity mechanism at the EU level, which would commit EU countries to supporting each other whenever they are facing major pressure. Temporary and ad hoc solidarity based on voluntary contributions by Member States, as in the case of disembarkations following SAR operations or the 2020 relocations from Greece, is difficult to manage, is unsustainable and results in an unbalanced distribution of responsibilities amongst Member States.”</p> <p>Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 2 - 2 (0)</p>	<p>1) Explicit</p> <p>2) Implicit</p> <p>Overlay of categories possible. A coded element may be assigned to several categories or sub-categories due to the entanglement of the different categories and sub-</p>

		<p>by the scientific service are assigned here.</p>	<p>“Since 2009, the European Parliament has been calling consistently for a binding mechanism for the fair distribution of asylum-seekers among all EU Member States” Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 3 - 3 (0)</p> <p>“frontline Member States that fail to register applicants would have the relocation of such applicants from their territory suspended, while Member States refusing to accept relocation of applicants would face limits on their access to EU funds;” Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 3 - 3 (0)</p> <p>“The Parliament has been a strong supporter of the two mandatory emergency relocation measures proposed by the Commission in 2015” Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 4 - 4 (0)</p> <p>“Furthermore, Parliament has taken the view that Article 80 TFEU, together with Articles 77, 78 and 79 TFEU, provides a joint legal basis for implementing the principle of solidarity in the areas of asylum, immigration and border control” Miscellaneous\Briefing Legislative Progress Proposal [EPRS]: 4 - 4 (0)</p> <p>“It has also identified tools to promote the concepts of internal and external solidarity, such as relocation, mutual recognition of asylum decisions, operational support measures, resettlement, humanitarian admission, search and rescue at sea, and the civil protection mechanism.”</p>	<p>categories, which have been separated for analytical purposes only.</p>
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			Miscellaneous\Briefing	Legislative	Progress	Proposal	
			[EPRS]: 4 - 4 (0)				