

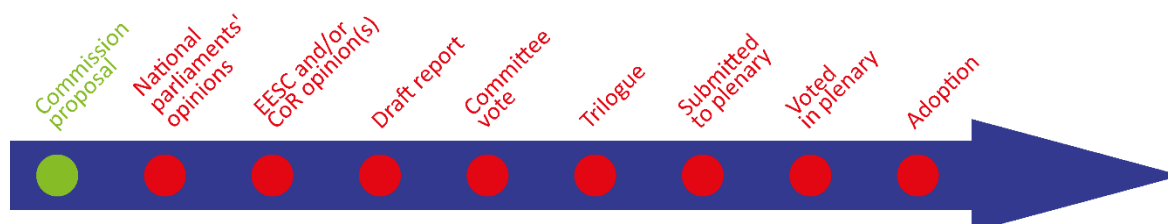
Reforming asylum and migration management

OVERVIEW

In September 2020, the European Commission submitted a proposal on asylum and migration management, to replace the 2013 Dublin Regulation that determines the EU Member State responsible for examining asylum applications. While the proposal 'essentially preserves' the current criteria for determining this responsibility, it would also make changes and additions to the regulation, especially on solidarity and responsibility-sharing for asylum-seekers among Member States.

The proposal comes after a failed attempt to reform EU asylum policy following the 2015 migration crisis. While the migratory context has changed since, both in terms of arrivals and the composition of flows, the migration situation remains fragile, as evidenced by pressures on national asylum systems and continual disembarkations after search and rescue operations. According to the Commission, addressing this situation requires a relaunch of the reform of the common European asylum system to achieve a more efficient, fair and harmonised framework that is more resistant to future migratory pressures. The new system would ensure international protection to those who need it and be effective and humane towards those who have to be returned.

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]		
<i>Committee responsible:</i>	Committee on Civil Liberties, Justice and Home Affairs (LIBE)	COM(2020) 610 23.9.2020
<i>Rapporteur:</i>	To be appointed	2020/0279(COD)
<i>Shadow rapporteurs:</i>		Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Initial discussions in committee	



Introduction

In recent years, Europe has had to respond to the most severe migratory challenge since the end of the Second World War. The EU and Member States' migration and asylum policies and instruments have not been sufficiently geared to address those challenges. The EU has responded by taking concrete action through immediate (emergency) measures to deal with the peak flows, while also proposing longer-term measures in order to establish a resilient and balanced approach to dealing with regular (legal) and irregular immigration.

Despite the relative effectiveness of these actions in helping to secure the EU's external border, reduce the number of irregular migrants arriving at the border and increase cooperation with third countries, the EU has not succeeded in [reforming](#) the common European asylum system ([CEAS](#)). The two most controversial issues preventing the EU Member States from reaching a compromise have been the principles of solidarity and fair sharing of responsibility for asylum-seekers, on the one hand, and the reform of the [Dublin system](#) (the cornerstone of the legal framework that determines the EU Member State responsible for examining asylum applications), on the other.

Although the share of [irregular arrivals](#) to the EU dropped dramatically between 2015 and 2020, the pressure on national asylum systems, especially in some Member States, remains high. Furthermore, the nature of [migration flows](#) in terms of numbers and composition has changed since 2015. Migrants disembarked following search and rescue (SAR) operations now represent a significant share of arrivals, and the share of migrants from countries of origin whose nationals have a low chance of being granted international protection has increased.

The migration situation remains fragile, as shown by continuing [flows](#) of migrants in the Mediterranean. What is more, instability in neighbouring regions, such as Syria and Libya, gives further impetus to refugee movements towards Europe.

As acknowledged by the European Commission, the above situation requires relaunching and adapting the CEAS reform initiated during the 2015 migration crisis, with a view to putting in place a comprehensive framework that is more efficient, harmonised and fair, and more resistant to future migratory pressures. While remaining flexible in times of crisis, this new framework should also ensure international protection for those who need it; effective and humane treatment to those who are returned; and solidarity and responsibility-sharing among Member States.

Existing situation

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 harmonised. This situation leads to absconding and [unauthorised movements](#) of migrants across the EU, and to the inefficient return of people who do not qualify for protection. 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.

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. 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. 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.

Furthermore, there are significant structural weaknesses in the design and implementation of the Dublin system. This has been suggested by a recent [study](#) and acknowledged by the Commission in its [communication](#) of 6 April 2016. The main issues include:

- *The hierarchy criteria*, which do not take into account the realities faced by the Member States' asylum systems; place substantial responsibility on Member States at the EU's external border; and prevent applicants' swift access to the asylum procedure;
- *Inefficient rules on the shift of responsibility* between Member States, which provide an incentive for unauthorised movements;
- *Procedural inefficiencies* linked with take-charge and take-back requests, which create a significant administrative burden; and
- *The timeframes for making transfers and submitting appeals*, which vary significantly between Member States and create legal uncertainty for both applicants and the relevant Member State authorities.

Parliament's starting position

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 (see EP resolutions of [25 November 2009](#), [11 September 2012](#), [9 October 2013](#), [23 October 2013](#), [17 December 2014](#), [29 April 2015](#), [10 September 2015](#) and [12 April 2016](#)).

In its October 2017 [first-reading report](#) on the proposed recast of the Dublin Regulation – the earlier proposal to reform the EU regulation that determines which country is responsible for examining an asylum application, which has now been replaced by the present proposal – the Parliament's LIBE committee adopted the following amendments:

- where asylum-seekers have a 'genuine link' with a particular Member State, this link should be the first relocation criterion for transferring them to that Member State;
- asylum-seekers that have no genuine link with a particular Member State would automatically be assigned to a Member State according to a distribution key; that Member State would then be responsible for processing their asylum applications;
- asylum-seekers would be able to choose among the four countries that, at that given moment, have received the fewest asylum-seekers according to a distribution key;
- countries of first arrival must register all asylum-seekers and check their fingerprints as well as the likelihood of an asylum-seeker being eligible for international protection;
- applications from applicants with a very small chance of receiving international protection would be examined in the country of arrival;
- individual guarantees for minor asylum-seekers and an assessment of their best interests would be considered a priority;
- faster family procedures should be introduced under which asylum-seekers are immediately transferred to a country in which they claim to have family; furthermore, family members' applications for international protection should be processed together, without prejudice to the right of an applicant to lodge an application individually;
- a clear system of incentives and disincentives should be introduced for asylum-seekers to avoid absconding and secondary movements. Furthermore, the meaning of absconding needs to be clearly defined;
- 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;
- the solidarity contribution of €250 000 per applicant by a Member State that decides not to relocate asylum-seekers is rejected.

The Parliament has been a strong supporter of the two mandatory emergency relocation measures proposed by the Commission in 2015 ([Council Decision 2015/1523](#) and [Council Decision 2015/1601](#)). It [voted](#) in favour of the Commission's first relocation proposal and decided to follow a fast-track procedure as well as to advance in parallel all other measures proposed by the Commission. As regards the second emergency measure, Parliament adopted a [resolution](#) under the urgent procedure, approving the Commission's proposal without amendment. The Parliament's approval in such a short time was designed to send a strong signal to Member States that there was no time to waste and that urgent action was needed. On 18 May 2017, owing to the low level of relocations by Member States (11 % of the total obligation by April 2017), Parliament adopted a [resolution](#) urging Member States to fulfil their obligations regarding relocation. It acknowledged that some progress had been made, but expressed its disappointment regarding Member States' unfulfilled commitments to solidarity and responsibility-sharing.

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. 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.

Council & European Council starting position

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.

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. Several Council presidencies have explored [proposals](#) to reach an overall balance between solidarity and responsibility-sharing, without success. From early on in the discussions, a [small number of countries](#) have ensured the unanimity required to give a mandate to the presidency to enter into interinstitutional negotiations with the Parliament could not be reached. Furthermore, several Member States submitted a [position paper](#) arguing for the reduction of the 'fair share' (the criterion used for determining the number of applicants that each Member State could be expected to handle), and for the alleviation of the procedural burdens for the frontline Member States under pressure.

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).

Preparation of the proposal

In 2015, ICF International prepared two studies for the Commission – an [Evaluation of the Implementation of the Dublin III Regulation](#) and an [Evaluation of the Dublin III Regulation](#) – assessing the effectiveness, efficiency, relevance, consistency and EU added value of the Dublin III Regulation and highlighting the shortcomings in its design and implementation. Their findings have been included in the EPRS [implementation assessment](#) of the regulation, which gives an overview of the various evaluations that have been conducted on it since its entry into force and outlines the main weaknesses found. The Commission's [staff working document](#), published ahead of its 2020 proposal, makes reference to the EPRS implementation assessment.

In addition to the external evaluations, the Commission held targeted consultations with the European Parliament, the Member States (including national and local authorities) and stakeholders (non-governmental and international organisations, think-tanks and academia), as evidenced by its staff working document.

The changes the proposal would bring

The new [proposed](#) regulation on asylum and migration management (AMM) would replace the 2013 [Dublin Regulation](#). While the proposal 'essentially preserves' the current criteria for determining the responsibility for examining an application for international protection, it also introduces some changes and new elements to the existing regulation. The main elements of the proposal are:

- changes to the existing procedure for determining the Member State responsible for examining an asylum application;
- a new solidarity mechanism to ensure fair sharing of responsibilities in the area of asylum and return, consisting of several solidarity contributions.

Changes to the existing procedure for determining the Member State responsible for examining applications for international protection

The applicant for international protection is obliged to lodge their application in the Member State of their first irregular entry, in observance of the screening procedure at the EU external border, or in the Member State of their legal stay. Member States must in all cases indicate in the Eurodac asylum fingerprint database the Member State responsible for examining the application for international protection, after having concluded the procedures for establishing this responsibility and ensured that the applicant does not pose any danger to national security or public order before being transferred to the responsible Member State. The applicant is entitled to material reception rights only in the country in which they are required to be present during the procedure for determining the responsibility or examining the application on its substance. In case of non-compliance, there remains an obligation for all Member States to ensure a standard of living in accordance with Union law (see Court of Justice of the European Union (CJEU) cases [C-233/18](#) and [C-179/11](#)) and international obligations.

As regards unaccompanied minors, in the absence of a family member or a relative, the Member State responsible should be that where the unaccompanied minor's application for international protection was first registered, unless it is demonstrated that this would not be in the best interests of the child. This goes against CJEU case law ([case C-648/11](#)), according to which an unaccompanied minor who has no family member legally present in a Member State and who has lodged an asylum application in more than one Member State, should have their application examined by the Member State in which that minor is present after having lodged an asylum application there.

The definition of family members is extended to include siblings of an applicant and family relations formed in transit, i.e. before arrival on EU territory. Provisions on evidence of family links are made more flexible by not requiring formal proof, such as a DNA sample, in case of sufficient other evidence to establish responsibility based on family links.

The shift of responsibility to another Member State after 12 months have elapsed from the moment of an applicant's irregular entry into the EU has been extended to three years. Furthermore, rules on cessation of responsibility due to the applicant's behaviour, such as absconding, have been deleted.

As regards the criteria for determining the Member State responsible, a Member State will remain responsible for an asylum application if it issued a visa or residence document that expired in the past three years (currently, a Member State remains responsible only if the visa has been expired for less than six months, and the residence permit expired for less than two years). An applicant can have their application examined in a Member State in which they have obtained a diploma or a qualification.

The proposal also offers refugees or persons with subsidiary protection status the possibility to obtain EU long-term resident status after three years, rather than five.

The right to an effective remedy is limited to an assessment of whether the family criteria have been correctly applied or whether the transfer will result in an inhuman or degrading treatment (see *M.S.S. v Belgium and Greece* and joined cases [C-411/10 and C-493/10](#)), as prohibited by Article 4 of the [Charter of Fundamental Rights of the European Union](#).

New solidarity mechanism consisting of several solidarity contributions

The Commission's proposal has moved away from the mandatory relocation of asylum-seekers, which proved controversial during the 2015 migration crisis to the point where some Member States refused to comply with the mechanisms adopted under [Article 78\(3\) TFEU](#) (see joined cases [C-643/15 and C-647/15](#) and joined cases [C-715/17, C-718/17 and C-719/17](#)). It is instead proposing a structured and flexible solidarity mechanism based on different solidarity contributions:

- relocation of asylum-seekers not in a border procedure;
- relocation of beneficiaries of international protection;
- return sponsorship of illegally staying third-country nationals; or
- support for capacity-building in the Member State (or non-EU country) facing migratory pressure.

There are separate rules for general migratory pressure or risk of pressure, on the one hand, and search and rescue disembarkations, on the other.

Migratory pressure

The Commission would assess the extent of the [migratory pressure](#) experienced by a Member State, by taking into account a series of circumstances, including, for example, the number of asylum applications, search and rescue cases, irregular border crossings and returns, geopolitical situation and cooperation with the relevant non-EU countries of origin and transit. Member States would contribute to alleviating the migratory pressure on a Member State primarily by relocation (prioritising unaccompanied minors) or help with the return of illegally staying migrants and, when needed, by capacity-building measures, which should not exceed 30 % of the total contributions identified for the benefitting Member State.

The share of solidarity contributions of each Member State would be based on a distribution key that takes into account the size of its population (50 % weighting) and the total GDP (50 % weighting), and would be specified in a Commission implementing act.

Solidarity after search and rescue

The mechanism of [solidarity for disembarked persons](#) in a Member State applies to search and rescue operations as well as to vulnerable persons, regardless of how they crossed the EU external border. The mechanism is primarily based on voluntary contributions to be made at the Commission's request, taking into account the distribution key in case of relocation. Member States may choose from among the following options: relocation of asylum-seekers not in a border procedure; capacity-building measures; and relocation of vulnerable people.

In case of insufficient pledges resulting in a shortfall greater than 30 % of the total number of relocations identified for the benefitting Member State, the Member States that decided to contribute through capacity-building would be obliged to contribute either by relocation or return sponsorship.

While Member States cannot choose nationalities when relocating migrants (although meaningful links, such as family links or possession of diplomas or qualifications, should be established, if possible), they can do so when assisting with return operations.

Member States may also at any time make solidarity contributions on their own initiative, including by relocating applicants in the border procedure or illegally staying third-country nationals.

The asylum and migration management proposal does not include a solidarity mechanism to address crisis situations generated by a mass influx of persons into a Member State, as this mechanism is part of a separate proposal presented under the Asylum and Migration Pact.

Advisory committees

The European Economic and Social Committee and the European Committee of the Regions have not yet presented their opinions on the proposal.

National parliaments

The deadline for the [subsidiarity check](#) in the Member States' national parliaments has not been set.

Stakeholder views¹

Numerous stakeholders in the domain of migration and asylum, such as the European Council on Refugees and Exiles, the Danish Refugee Council, Human Rights Watch and the International Rescue Committee, have issued a [joint statement](#) labelling the proposal as a missed opportunity to fundamentally reform the Dublin system. They mainly regret that the responsibility for assessing asylum claims remains, in practice, with the first country of arrival, and that the solidarity mechanism might not support a predictable sharing of responsibility. They furthermore point out that this mechanism could prove too complex to be effective in practice. Nevertheless, the joint statement considers the following a positive addition: the expanded definition of family to include siblings, the broadening of the range of family members in the case of unaccompanied children, and the holding of a diploma or other qualification when determining the Member State responsible.

The International Centre for Migration Policy Development [welcomes](#) the new forms of solidarity presented in the proposal, especially return sponsorship, seeing it as a necessary component of a migration policy that needs to focus more on the external dimension. However, it remains cautious whether this proposal, together with other elements of the package, will help to bring a breakthrough in the internal dimension of the EU migration and asylum policy.

The Centre for Strategic and International Studies [raises concerns](#) about the diluted notion of solidarity and the focus on border enforcement and return, which are popular with Member States reluctant to accept asylum-seekers. It also emphasises that this could undermine EU efforts to reinforce fundamental rights and values as enshrined in the EU Treaties.

Academic views

In his [analysis](#) of the asylum proposal, Steve Peers from the University of Essex welcomes some of its elements, such as: the possibility for refugees and people with subsidiary protection to get EU long-term residence status after three instead of five years of non-interrupted residence; the broader definition of family members; the retention of the full sovereignty clause (letting a Member State take responsibility for an application even if the Dublin rules do not require it); and the abolition of the requirement that a Member State must first examine whether many of the grounds for removing an asylum-seeker to a non-EU country apply before considering whether another Member State might be responsible for the application (as proposed in 2016). However, Peers offers strong criticism regarding the proposed limitation of appeal rights in the Dublin system and expresses doubt whether Member States will embrace the idea of return sponsorship.

An [article](#) by Daniel Thym from the University of Konstanz on the proposal raises a number of concerns on issues such as: first entry and other criteria applied for determining the Member State responsible; the maintenance or abolition of the transfer of jurisdiction in case of missed deadlines; the absence of mandatory relocation in normal times or during a migration crisis; and the complexity of rules and procedures surrounding the solidarity mechanism.

Legislative process

The Commission's legislative proposal ([COM\(2020\) 610](#)) was submitted on 23 September 2020 and falls under the ordinary legislative procedure (2020/279(COD)). In the Parliament, the proposal has been assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and is to be discussed within the committee before the rapporteur (to be appointed) issues a draft report.

EP SUPPORTING ANALYSIS

Radjenovic A., [Solidarity in EU asylum policy](#), EPRS, European Parliament, March 2020.

Radjenovic A., [Reform of the Dublin system](#), EU Legislation in progress briefing, EPRS, European Parliament, March 2019.

[The Reform of the Dublin III Regulation](#), study for the LIBE committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2016.

[Enhancing the Common European Asylum System and Alternatives to Dublin](#), study for the LIBE committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2015.

[New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection](#), study for the LIBE committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2014.

OTHER SOURCES

[Asylum and migration management](#), European Parliament, Legislative Observatory (OEIL), 2020/0279(COD).

ENDNOTES

- ¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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