



ecre

European Council
on Refugees and Exiles

SOLIDARITY: THE ETERNAL PROBLEM

**RECENT DEVELOPMENTS ON SOLIDARITY IN
EU ASYLUM POLICIES: ECRE'S ANALYSIS AND
RECOMMENDATIONS**

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INTRODUCTION

The principle of solidarity among Member States is set out in Article 80 of the Treaty on the Functioning of the European Union (TFEU). However, the article does not clearly define the concepts of solidarity or fair sharing of responsibility that have been at the heart of the debate on asylum and migration in the European Union (EU) for many years. The focus of this debate is often the implementation of the Dublin III Regulation, the “cornerstone” of the Common European Asylum System (CEAS), which has frequently been the source of tensions among Member States. The European Commission has repeatedly emphasised the solidarity debate, with the balance between solidarity and responsibility one of the pillars of the 2020 Pact on Migration and Asylum.

The Pact files progressed slowly until the start of 2022 when the French Presidency of the Council of the EU gave it new momentum by launching the first step of the so-called “gradual approach”, which again puts solidarity at the centre of the negotiations. In June 2022, 18 EU Member States signed a Voluntary Solidarity Declaration to support the Med5 countries (Cyprus, Greece, Italy, Malta and Spain) in managing asylum applications in exchange for specific increased responsibilities at the borders (set out in the Regulation introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (the “Screening Regulation”). In parallel, the EU response to the Ukraine displacement crisis has led numerous stakeholders to express hope that it might offer an alternative way to manage asylum systems in Europe, including on the solidarity question.

ECRE maintains that a deeper reform of the rules on responsibility sharing is necessary above all. However, in the absence of political decisions to take forward such a reform, “corrective” solidarity mechanisms based on relocation are helpful ways to ensure a fairer sharing of responsibility among Member States, and such mechanism can have a positive impact for asylum applicants – for example, by ensuring swift access to the asylum procedure – so long as compliance with the existing rules is guaranteed, especially on fundamental rights.

This Policy Paper analyses developments over the last two years in the solidarity debates, and is mainly directed at those who are familiar with the framework that is under discussion. It starts by presenting the existing rules on solidarity and responsibility sharing on asylum and migration at the EU level; it then looks at developments in the debate that have occurred in recent years, particularly the plans for a predictable solidarity mechanism. It moves to examine the different alternatives to the current system. The paper ends with a set of recommendations to the EU and European states.

ANALYSIS

CURRENT RULES IN EU LAW ON SOLIDARITY AND RESPONSIBILITY SHARING

The Dublin system sets out the rules for sharing responsibility for asylum applications among the Member States. It has long been criticised for its overall design. The dominance of the first country of entry criterion, the lack of consideration for asylum applicants' preferences in the determination of the Member State responsible, and the lack of a common understanding of the scope and content of the principle of solidarity and fair sharing of responsibility, all generate disproportionate burdens for certain Member States, and have often given rise to frictions among countries given their different interests. Additionally, the system also perpetuates a vision of solidarity understood as purely an inter-state issue, without any mention of the need to promote solidarity and mutual respect between EU citizens and people in need of protection.

The use of corrective solidarity mechanisms

ECRE, along with many others, has consistently criticised the Dublin system's structure and logic as it perpetuates inefficient and unworkable mechanisms for the allocation of responsibility, an issue that has not been adequately addressed in recent reform proposals. Regardless, the Dublin III Regulation remains the applicable legal framework for determining which Member State is responsible for an application for international protection. Given the flawed rules in the legal framework, the EU has resorted to "corrective" solidarity mechanisms, which seek to mitigate the negative effect of the rules, especially when significant increases in arrivals are registered. These are typically ad hoc solidarity mechanisms based on relocating applicants from the Member States with the most arrivals – up until 2021, this was mainly those at the external southern border.

One such example was the 2015 relocation scheme,¹ set up by the EU with the objective of relocating asylum applicants from Member States at the EU external borders – specifically Greece and Italy – towards others. The emergency mechanism generated praise and controversy, with some Member States launching a legal challenge (unsuccessful), and many not fulfilling their commitments under the legislative act. When it was concluded, only around 34,000 people had been relocated from Italy and Greece, falling short of the initially planned 160,000. Nevertheless, it should be reiterated that all relocation is welcome, given the conditions faced by people arriving in countries with overburdened reception systems and in which access to the asylum procedure is significantly delayed.

This experience revealed the obstacles to an EU-wide solution for fair sharing of responsibility and was not followed by similar Council decisions. Instead, in 2019 new attempts at creating corrective solidarity mechanisms emerged, based on an agreement brokered by France and Germany and then in the form of the "Malta Declaration", a arrangement which was not legally binding, bringing together a "coalition of the willing" to make voluntary commitments as part of a "Predictable Temporary Solidarity Mechanism".² These efforts developed in response to incidents at sea with serious humanitarian consequences and which originated in the "closed doors" policy of the former Italian Interior Minister Salvini.³ The Malta Declaration was based on relocation after Search and Rescue (SAR) in the Mediterranean and was limited in scope to Italy and Malta. According to the information provided by the Commission in October 2020 in response to a Parliamentary question, from 2018 to 2020, 1,090 asylum applicants were successfully transferred from Malta and 1,016 from Italy under each relocation scheme.⁴ To contextualise, 43,783 first-time applicants were registered in Italy in 2019,⁵ and 4,021 in Malta.⁶

1. The Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (available at: <http://bit.ly/3Xjbwld>) provided for the relocation of 40,000 asylum seekers, without indicating specific obligations on Member States; the 22 September 2015, with Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (available at: <https://bit.ly/3iHSXOP>), the Council added an objective of a further 120,000 relocations and set out how many asylum seekers each Member State would be responsible for relocating.
2. See Germany, France, Italy and Malta, Joint Declaration of Intent on a Controlled Emergency Procedure—Voluntary Commitments by Member States for a Predictable Temporary Solidarity Mechanism, Valletta, 25 September 2019, available at: <https://bit.ly/3ZG7J9o>.
3. Politico, Matteo Salvini: Italian ports closed to migrants, 23 December 2018, available at: <http://bit.ly/3QSTvOz>.
4. European Parliament, Parliamentary question - E-004456/2020(ASW) - Answer given by Ms Johansson on behalf of the European Commission, 20 October 2020, available at: <https://bit.ly/3XFbkD2>.
5. ECRE/AIDA, Country Report on Italy – 2019 Update, April 2020, available at: <https://bit.ly/3QPBUk0>.
6. ECRE/AIDA, Country Report on Malta – 2019 Update, April 2020, available at: <https://bit.ly/3Wj5AxE>.

Legislative reform efforts: Dublin IV and Pact Proposals

The Dublin system's shortcomings were evident even to European Institutions, to the point that two separate attempts at reform have been presented in recent years. In 2016, the Dublin IV Regulation became the central and most contentious part of the European Commission's asylum reform package. While re-opening the discussion on responsibility-sharing rules, it substantially failed to produce an agreement on a concrete definition of solidarity and did not succeed in the creation of a permanent and codified mechanism to ensure the fairer sharing of responsibility for asylum applicants.⁷ Specifically, the proposed recast of the Dublin III Regulation did not address the key flaw of the system, the first country of arrival criterion as default for allocation of responsibility, as well as having other significant shortcomings.⁸ Additionally, it burdened Member States at the external borders with additional administrative layers in the asylum procedure, such as mandatory admissibility checks for asylum seekers before other Member States assume responsibility for their claims. While the European Parliament had introduced positive amendments to the proposal,⁹ such as mandatory quotas for relocations, no agreement on the file was reached.

On 23 September 2020, the European Commission launched the Proposal for a Regulation on Asylum and Migration Management (the "RAMM"), indicating that the Dublin IV proposal was to be formally withdrawn. As observed,¹⁰ inter alia by the European Parliament, the main contentious aspects of the Dublin system were not addressed in the Commission proposals; the Pact fundamentally misses the opportunity to propose a deeper reform of the Dublin system, maintaining in practice the default responsibility for assessing asylum claims in the first country of arrival. ECRE put forward detailed recommendations highlighting significant areas of concern;¹¹ among them, the fact that the rules on allocation of responsibility remain very close to the current Dublin system, as well as the reinforcement of the first entry criterion and the expansion of the scope of take back procedures. In contrast, ECRE strongly recommended deeper reform to remove long-standing and widely acknowledged dysfunctionalities.

THE STATE OF PLAY ON REFORMS OF RESPONSIBILITY SHARING

The European Parliament's reports

In October 2021, the Pact moved a step forward with the presentation of the first of the draft reports prepared by the European Parliament's Rapporteurs on the RAMM and Asylum Procedures Regulation (APR) files, which are proceeding together following agreements between the European People's Party (EPP) and Renew, the two political parties leading on the files.¹²

Regrettably, the draft report on the RAMM mostly worsened the problems present in the original proposal, with proposed amendments both reducing protection standards and further increasing the responsibilities of the Member States at the EU's external borders. Negotiations on the file between the Rapporteur and the Shadows continued, and are now focused on reaching an agreement on the solidarity chapter of the RAMM file. This has also been the main objective for the other co-legislator, the Council, although progress is slower.

In the European Parliament's position, a positive development has been registered with the deletion of return

7. See ECRE, ECRE Comments on the Commission Proposal for a Dublin IV Regulation COM(2016) 270, October 2016, available at: <https://bit.ly/3XETn7F>.
8. ECRE has examined in previous research the issues connected to the narrow definition of family members within the Dublin III Regulation, the lack of prioritisation of the family criteria and reasons for onward movement, which may occur due to personal needs and to the situation in the country of first arrival. See EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqj>; ECRE, *Asylum in Europe: the situation of applicants for international protection in 2021*, July 2022, available at: <https://bit.ly/3ekWLTu>; ECRE/AIDA, *The implementation of the Dublin III Regulation in 2021*, September 2022, available at: <https://bit.ly/3Hbbqg2>.
9. European Parliament, Report on the proposal for a regulation of the European Parliament and of the Council 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 (recast), 6 November 2022, available at: <http://bit.ly/3Wj6NoK>.
10. European Parliament, The European Commission's New Pact on Migration and Asylum - Horizontal substitute impact assessment, August 2021, available at: <https://bit.ly/3Hbk4LB>.
11. ECRE, ECRE Comments On The Commission Proposal For A Regulation On Asylum And Migration Management COM(2020) 610 2020/0279 (COD), February 2021, available at: <https://bit.ly/3iE72gp>.
12. European Parliament, Draft Report on the proposal for a regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] (COM(2020)0610 – C9-0309/2020 –2020/0279(COD)), Committee on Civil Liberties, Justice and Home Affairs, 11 October 2021, available at: <https://bit.ly/3XC1m57>.

sponsorship as one form of solidarity contribution and the indication of relocation as the primary form of solidarity. Nonetheless, the controversial element of capacity building outside the EU as a form of solidarity contribution – and the conditions under which it can operate to be considered valid – is still under discussion.

The “gradual approach”: the Council’s way forward

After a sluggish start in negotiations on the Migration and Asylum Pact on the Council side, new momentum was found through the agreement in June 2022 on the first step of the so-called “gradual approach”, as brokered by the French Presidency of the Council of the EU. The agreement took the form of a “general approach” – a binding agreement among the Member States representing the Council’s position to be taken into the negotiations with the co-legislator – the European Parliament – on two legislative files, the Screening and Eurodac Regulations. These two pieces of legislation entail increased responsibilities for the Member States at the EU’s external borders, in exchange for which the Council also agreed on a “Declaration” on a voluntary and temporary solidarity mechanism, using the calculation of a “fair share” of people to be relocated based on the country’s GDP.

In June, 18 Member States and 3 associated countries signed the declaration on a solidarity mechanism.¹³ The relocation pledges obtained soon after the approval of the Declaration were slightly above 8,000, with Germany and France contributing 3,500 and 3,000, respectively, and smaller pledges from Luxembourg, Ireland, Portugal and Belgium.¹⁴ Many states did not make pledges, citing reasons including overstretched reception systems due to the displacement from Ukraine and concerns that the mechanism would serve as a pull factor.

Under this (corrective) solidarity mechanism, relocations primarily take place following SAR operations, and Member States participating in the mechanism have the choice of providing solidarity through relocations or financial contributions. Its scope covers the Central Mediterranean (Italy and Malta), the Atlantic route (Spain), and then Cyprus and Greece. Crucially, the mechanism is restricted to those “in need of protection” – a severe limiting factor, that suggests that a filtering which pre-empts the asylum procedure might take place, to provide an initial determination of protection needs. It also envisages a reduction in solidarity contributions in the case of significant onward movements or lack of cooperation under the Dublin system.¹⁵

In late September 2022, the results of a technical meeting on relocation held under the Solidarity Platform managed by the European Commission showed that Member States were not rushing to meet the set targets. France refused many candidates on security grounds, while Spain did not have a timeline for transfers. Sweden recently declared it could not participate in the relocation scheme due to its uncertain legal basis.¹⁶ As a result, by November 2022, the number of relocated applicants was just over 100. Moreover, after the row between Italy and France on disembarkation from NGO boats carrying out SAR activities in the Central Mediterranean,¹⁷ the latter declared it would not fulfil its pledges until Italy complies with its obligations under the International Law of the Sea. To tackle the impasse, an emergency JHA Council meeting was held on 25 November 2022, during which the Action Plan for the Central Mediterranean presented by the European Commission was endorsed by EU interior ministers.¹⁸ The Action Plan proposes accelerating the implementation of the voluntary solidarity mechanism and adopting a more coordinated approach to SAR. But it also puts a worrying focus on cooperation with third countries – including Libya – to prevent departures.

Strengthening the solidarity declaration: the Czech Presidency proposal

The Czech Presidency of the Council of the EU, taking over the challenge of progressing on the Pact files through the “gradual approach”, seemed to be aware of the imbalance in the status of the two sides of the agreement. The Screening Regulation and Eurodac are pieces of legislation thus giving rise to binding

13. See: Results of the French Presidency of the Council of the European Union, available at: <https://bit.ly/3XBxtlD>.
14. European Commission, Solidarity Platform ‘Pact’ Monday 27 June 2022 Operational Conclusions, available at: <https://bit.ly/3ilu4Tc>.
15. See: Statewatch, Council of the European Union - First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism, 7 June 2022, available at: <https://bit.ly/3iGgYGe>.
16. European Commission, Solidarity Platform ‘Pact’ Technical Meeting On Relocation Thursday 22 September 2022 Operational Conclusions, available at: <https://bit.ly/3CTkdkv>.
17. See: Le Monde, France and Italy quarrel over fate of humanitarian ship with 234 migrants, 9 November 2022, available at: <http://bit.ly/3H8iHNR>; ECRE, Mediterranean: Stand-off Over Disembarkations of Survivors Rescued by Civilian Search and Rescue Operators Leaves Italian Government on Collision Course with France, NGOs and International Law, 11 November 2022, available at: <http://bit.ly/3CPQXuD>; Euronews, France brands Italy’s refusal of migrant rescue ship a ‘nasty gesture’, 18 November 2022, available at: <https://bit.ly/3Hahplh>.
18. European Commission, EU action plan for the Central Mediterranean, available at: <http://bit.ly/3CQtVUA>.

legal obligations, and the General Approaches represent a collective position of the Member States. On the other side is a voluntary solidarity mechanism which falls short of providing a predictable, fair and clear relocation mechanism, and about which four of the Med5 countries have already voiced discontent.

The Czech Presidency of the Council recently took up the suggestion, already put forward by ECRE in its Comments on the Commission Proposal on RAMM,¹⁹ to detach the solidarity mechanisms foreseen by the RAMM in order to provide a stronger legislative basis for the solidarity mechanism. This would also be an opportunity to reach a compromise that would correct the imbalances created by the agreement that balances the Screening and Eurodac Regulations against an informal mechanism on solidarity. It would strengthen the solidarity offered to the Member States at the EU's external borders, and better counterbalance the significant increase in responsibility that the approval of the other files would entail – even if only Screening and Eurodac move forward. It should be noted that RAMM and APR would further increase responsibilities at the borders but are not part of the “gradual approach” deal.

The system proposed by the Czech Presidency aims at ensuring a minimum threshold for predictable annual solidarity contributions, either in terms of relocation pledges (between 5,000 and 10,000) or financial contributions (between EUR 100,000 and 200,000), without prejudice to the possibility for the European Commission to set higher annual targets through the Annual Migration Report.

Relocations would primarily apply to people in need of international protection, prioritising those most vulnerable, but relocating Member States would be able to put forward their preferences. One risk inherent in such “flexibility” is that Member States “cherry-pick” applicants based on factors such as nationality or the presumed well-foundedness of their asylum claim. Furthermore, concerns emerge over transparency in the definition of criteria for prioritisation of applicants included in the relocation scheme. It has already been demonstrated in previous relocation efforts that such an approach can create an additional administrative burden for the Member State of disembarkation and run counter to principles of non-discrimination in international law. Regardless, it should be recognised that the proposal sets a relatively ambitious target in terms of mandatory solidarity contributions, unlike its voluntary predecessors. It remains problematic that it would be conditional on the application of the Screening Regulation, on the use of mandatory border procedures (albeit subject to derogations based on recognition rates and “migratory pressure”), and on “the fight against secondary movement”, as reiterated by the Presidency in a discussion paper presented to MS delegations on 25 November.²⁰ This is in line with previous attempts at exchanging solidarity for an increased use of border procedures and continuous focus on impeding onward movement, even when the implementation of the Temporary Protection Directive has shown that an alternative way forward is possible, including on solidarity.

ALTERNATIVES ON SOLIDARITY

Alternative one: Deeper reform of the Dublin rules

The most desirable outcome on solidarity and responsibility sharing, albeit one unlikely in the current political context, would be a proper revision of the rules on responsibility sharing at the institutional level. That would entail a complete reform of Dublin, which would be replaced by a system in which responsibility is determined through criteria that do not put at the forefront the place of first entry. Instead, as ECRE and others have previously set out, determining responsibility could be based on a range of factors, including (a) a broadened definition of family member; (b) meaningful links with a country; and (c) factors linked to the country itself, such as labour market needs.

It should be highlighted that it is above all fundamental that Member States respect reunion with core family members as the criterion with primacy, even under the current Dublin system, and without applying an excessively strict interpretation. However, expanded concepts of family links could allow the applicant to reunite with a range of close family members, specifically parents, children, grandparents, aunts, uncles, and cousins, as well as siblings as proposed in RAMM, to ensure that families of asylum applicants are not separated. The meaningful link criterion would entail that responsibility is determined by the applicant showing a meaningful link with a country based, *inter alia*, on language, culture, community, previous study, or previous residence. An additional criterion could be based on matching needs, where responsibility is determined by the needs expressed by the MS, such as labour market and skills shortages or depopulation. In this model, people would be relocated, with their consent, through a transfer.

19. ECRE, ECRE Comments On The Commission Proposal For A Regulation On Asylum And Migration Management COM(2020) 610 2020/0279 (COD), February 2021, available at: <https://bit.ly/3iE72gp>.

20. Council of the European Union, Pact on Migration and Asylum – way forward - discussion paper, 25 November 2022, available at: <https://bit.ly/3GOu6Rn>.

To complement this reformed system, additional forms of solidarity might be added, such as capacity building, provided that it is solely focused on improving the functioning of the asylum system or supporting compliance with CEAS provisions (and not on outsourcing responsibilities to third countries).

Alternative two: Status quo plus solidarity mechanisms

Without a deeper reform, however, maintaining the status quo, despite its numerous shortcomings, is preferable to a reform that worsens the rules, provided that the current rules are combined with an adequate solidarity mechanism. The use of corrective solidarity mechanisms to address the negative outcomes of the rules is unsatisfactory in the long term yet remains necessary while the rules persist.

In this context, ECRE strongly supports solidarity mechanisms,²¹ including the creation of a fair and transparent relocation mechanism to share responsibility for persons disembarked in EU ports. The primary aim of such an arrangement should be rapid allocation of responsibility to ensure that persons arriving by sea are quickly disembarked, identified, given access to the relevant procedures, and directed to the respective participating countries; particular attention should be paid to the conditions faced by people waiting for relocation after disembarkation. The mechanism should operate within the existing legal framework of the CEAS to be feasible and sustainable. The approach suggested by ECRE can be implemented based on provisions of the EU asylum acquis without adding new obligations for Member States.

Detailed plans on how it could work were put forward by ECRE and many others.²² Experiences in this respect already exist, notably in the form of the Messina model, the practical *modus operandi* involving EASO (now EUAA), national authorities and the European Commission, that found its legal basis in Article 17 of the Dublin III Regulation and was developed, applied and tested in Messina (Sicily) during the Seawatch 3 disembarkation in March 2019.²³

While recognising the limits of solidarity mechanisms that are based on pre-established quotas or financial amounts rather than mechanisms that respond to the actual number of arrivals, ECRE supports the use of solidarity mechanisms as set out in the Declaration, especially if a solid legal basis for the mechanism is added, such as through the use of the sections on solidarity in the RAMM (detached from the rest of the RAMM proposal). Nonetheless, ECRE does not support agreements which depend on increased containment of people at the borders in exchange for new solidarity mechanisms.

Alternative three: Rights-based implementation of the rules

With or without corrective solidarity measures, improvements can be made in the implementation of the current rules under the Dublin system. ECRE has provided analysis and recommendations on how to ensure implementation that is fully in compliance with fundamental rights and extensively supports litigation to this effect. For example, the Dublin III Regulation lists family unity as the first in the hierarchy of responsibility criteria. Statistics show, however, that Member States do not prioritise these criteria and are therefore not respecting the hierarchy set out in the Regulation.²⁴ Additionally, the definition of family is narrow, being confined to the spouse/partner and underage children, who are also in the EU as asylum seekers or refugees, and is often strictly interpreted by Member States. For unaccompanied minors, family unity can be extended to other family members as listed in the Dublin III Regulation, and when in the best interests of the child apply; even so, here, too, there is a lack of respect for the rules.²⁵

Family provisions remain rarely used in most countries, despite the likely presence of family members elsewhere in the EU for a certain number of applicants. Additionally, many transfer requests presented by Dublin units are still not followed by actual transfers, often due to national Courts blocking them in view of fundamental rights concerns such as the right to family life or risk of undignified treatment. As ECRE previously argued, these cases are not inevitable, as the “sovereignty clause” of the Dublin III Regulation allows countries

21. ECRE, Relying on Relocation - ECRE's Proposal for a Predictable and Fair Relocation Arrangement Following Disembarkation, January 2019, available at: <https://bit.ly/3WisFJS>.

22. ECRE, A Contingency Plan for Disembarkation and Relocation, 11 January 2019, available at: <http://bit.ly/3ZFi19P>.

23. Reliefweb, Note on the 'Messina Model' applied in the context of ad hoc relocation arrangements following disembarkation, 10 September 2019, available at: <https://bit.ly/3ZEWyOm>.

24. ECRE/AIDA, The implementation of the Dublin III Regulation in 2021, September 2022, available at: <https://bit.ly/3Hbbqg2>.

25. See for example, AIDA, Country report Greece – Update on the year 2021, May 2022, available at: <https://bit.ly/3Rf5gOU>, p.77; on delays in the implementation of the guardianship system in Greece.

to take responsibility for an asylum application at any time,²⁶ and they should do so rather than persisting with transfers that are doomed to fail and during the – often lengthy – processing of which people are left in limbo.²⁷

Lessons from the Ukraine response

In 2022, in response to massive displacement from Ukraine following the invasion by Russia, the EU activated the 2001 Temporary Protection Directive (the TPD) for the first time. As has been extensively analysed, including by ECRE, the response is very different to the EU's response to other major displacement crises, and not least because the TPD has been used.

Notwithstanding the major challenges that remain for people fleeing due to the conflict and for the Member States hosting large numbers of people, ECRE considers the political decisions and strategy in place to be positive, and an approach that should be considered whenever relevant. As well as immediate access to protection, the TPD and implementing Council Decision specify the rights to which those covered by the TP regime are entitled. In contrast to the CEAS rules as a whole, this includes freedom of movement; onward movement within the EU is supported or even facilitated.²⁸

The positive effect is that the right to family reunion is being implemented far more effectively than is usually the case for those seeking protection in Europe. Other forms of “matching” also take place, with people moving on to places where they may have links other than family connections or where there are job prospects. Many of the negative consequences of allowing freedom of movement that Member States use as a reason for maintaining restrictions have not materialised so far. The EU response to people fleeing Ukraine should thus be used as a positive example of responsibility sharing among EU Member States.

26. ECRE, To Dublin or not to Dublin? ECRE's Assessment of the Policy Choices Undermining the Functioning of the Dublin Regulation, with Recommendations for Rights-Based Compliance, November 2018, available at: <https://bit.ly/3pYaaUn>.

27. See ECRE/AIDA, The implementation of the Dublin III Regulation in 2021, September 2022, available at: <https://bit.ly/3Hbbqg2>.

28. ECRE analysed challenges and good practices for what concerns “pendular” movement to and from Ukraine and presented its recommendations to ensure security of status and rights for people covered by the TPD regime. See: ECRE, Movement to and from Ukraine under the Temporary Protection Directive, January 2022, available at: <https://bit.ly/3w7enbp>.

RECOMMENDATIONS

The response to the Ukraine crisis showed that an EU-wide, positive response to large-scale displacement is possible. It introduced a different approach to solidarity: granting freedom of movement to Temporary Protection beneficiaries, recognising their agency and encouraging their reliance on diaspora communities has been largely a positive development (albeit not without significant challenges for families and other private hosts) that should be considered in designing alternatives on responsibility sharing and solidarity in EU asylum policies. It also serves as an alternative to the trend towards uncertainty of status and lower content of protection, as well as to the effort to contain people at borders. More generally, ensuring fair sharing of responsibility, within or outside the Dublin system, should be accompanied by adequate resourcing of asylum systems and better compliance with all the asylum *acquis*.

ECRE recognises, however, that there are a number of possible scenarios in the short and medium term, and thus presents or reiterates the following recommendations which apply to the various options under consideration.

Deeper reform of the Dublin rules

ECRE's preference would be for a deeper reform of the rules on solidarity and responsibility sharing to create a system that is fairer for applicants and Member States alike. It is now possible to take stock of the response provided by EU countries to displacement from Ukraine and rethink solidarity.

ECRE thus recommends to the co-legislators:

- » While negotiations on the RAMM continue, to consider abolishing the first entry criterion, currently applying under Dublin, and introducing a wider range of criteria for allocating responsibility, such as through the expansion of the family member definition and the introduction of a criterion based on meaningful links, with transfers to quickly get people to the responsible Member State.

Status quo plus solidarity mechanisms

In the absence of a deeper legislative reform in line with the principles mentioned above, ECRE recommends to EU Member States:

- » To set up a permanent, corrective solidarity mechanism that guarantees predictability and certainty, for both asylum seekers and Member States. It should focus either solely on relocation, or on relocation with limited capacity building activities directed at making asylum systems in Europe function. A monitoring mechanism to ensure transparency and respect for fundamental rights within the scheme should be set up.

Even agreements that are limited in scope and voluntary in nature are useful and can be built on and expanded once they are functioning. For example, solidarity in the form of relocation after SAR or a broader solidarity agreement covering all border situations would be helpful. Due to the severe humanitarian implications, the need for cooperation and agreement on disembarkation should always be kept at the forefront of the debate on solidarity.

ECRE also proposes that:

- » The chapters on solidarity in the RAMM could be used to provide a stronger legal basis for the solidarity mechanism, by detaching them from the rest of RAMM. This could be key to ensure the debate on solidarity moves forward. While ECRE had [welcomed](#) the introduction of a solidarity mechanism for the situation of disembarkation after SAR in the RAMM, it continues to highlight the need for improvements concerning the forms and amount of solidarity contributions.

Rights-based implementation of the rules

ECRE urges Member States:

- » To act in compliance with CEAS rules and ensure their correct implementation, regardless of whether and which reforms are agreed. Otherwise, the presentation of new proposals and ongoing negotiations serves as a justification for disregarding current legal obligations. Even with a lack of agreement on reforms and in the absence of operational and effective solidarity mechanisms, Member States should focus on better implementation of the current system, in particular ensuring that respect for fundamental rights of asylum seekers is granted during each step of the asylum procedure.

Pact negotiations moving forward

ECRE recommends the co-legislators

- » If only a partial deal is reached on a solidarity mechanism – be it binding or voluntary – the recommendations detailed in ECRE’s Policy Paper [Quo vadis EU asylum reform?](#) regarding the files that concern an increase of responsibility for border Member States remain valid. Concerning the Asylum Procedures Regulation (APR), ECRE argues that the proposal should be abandoned, given the reduction in standards and the complexity which makes it unworkable in practice; it is based on a model of containment at borders with disproportionate responsibility for countries of entry.

ECRE urges the European Parliament:

- » Not to accept a compromise on low protection standards, if negotiations on all Pact files move forward. If the package approach is maintained, then a credible alternative which reforms the rules on responsibility sharing in RAMM is essential. The inclusion of safeguards should not be considered a sufficient addition.



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