

THE BALKAN MIGRANT ROUTE: A EU UNRESOLVED CRISIS?

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Abstract

This article aims to underline how the Western Balkans are an area of fundamental geo-strategic interest for the security inside and outside Europe. Its geostrategic importance was even more evident when, since 2015, the Western Balkans have been crossed by one of the most impressive migratory routes to Europe, the so-called "Balkan route", showing the political instability of both the region and the EU. The massive flow of asylum seekers led the EU institutions to recognize in April 2015 the exceptional nature of the situation, calling unsuccessfully for the adoption of solidarity measures to overcome the catastrophic humanitarian situation in the so-called "frontline Member States". In this framework, the article intends to briefly investigate the limits of the existing regulatory framework, which was unable to offer an adequate response to such a situation, as well as of the proposals of the EU Pact on migration of asylum in order to find a solution to a crisis that is not only a migration crisis, but a deeper crisis of identity that is struggling to balance the coexisting interests of the EU legal system.

Keywords: *Migration Crisis, New Pact, Relocation Quota System, Solidarity, Western Balkans.*

RRUGA E BALLKANIKE E MIGRACIONIT: NJË KRIZË E PAZGJIDHUR E BE-SË?

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Abstrakt

Ky artikull synon të nënvizojë se si Ballkani Perëndimor është një zonë me interes gjeostrategjik thelbësor për sigurinë brenda dhe jashtë Evropës. Rëndësia e tij gjeostrategjike u bë edhe më e dukshme që nga viti 2015, kur Ballkani Perëndimor përshkrohet nga një nga rrugët më mbresëlënëse të migratore drejt Evropës, e ashtuquajtura “rruga ballkanike”, që tregon paqëndrueshmërinë politike si të rajonit ashtu edhe të BE-së. Fluksi i madh i azilkërkuesve bëri që institucionet e BE-së të njohin në prill 2015 natyrën e jashtëzakonshme të situatës, duke kërkuar pa sukses miratimin e masave të solidaritetit për të kapërcyer situatën katastrofike humanitare në të ashtuquajturat “Shtetet Anëtare të vijës së parë”. Në këtë kuadër, artikulli synon të hetojë shkurtimisht kufijtë e kuadrit rregullator ekzistues, i cili nuk ishte në gjendje të ofronte përgjigjet e duhura ndaj një situatë të tillë, si dhe propozimet e Paktit të BE-së për migracionin dhe azilin, me qëllim që të gjendet një zgjidhje për një krizë që nuk është vetëm një krizë migracioni, por një krizë më e thellë identiteti që po përpiqet të balancojë interesat bashkëekzistuese të rendit juridik të BE-së.

Fjalë kyçe: *kriza e migracionit, Pakti i ri, Sistemi i Rishpërdarjes së Kuotave, solidariteti, Ballkani Perëndimor*

1. Introduction

The Western Balkans are an area of fundamental geo-strategic interest for the security inside and outside Europe (1) because Western Balkan borders are EU borders. This has placed the region high on the EU agenda, underlining its importance strategically and security-wise. It is also a frontier region between Europe, Asia and Africa, as well as a point of origin and a transit area for migration. Therefore, migration management has been a prominent issue in EU-Western Balkans relations since the early 2000s through the EU’s use of visa facilitation and readmission (2).

This geostrategic importance was even more evident when, since 2015, the Western Balkans have been crossed by one of the most impressive migratory routes to Europe, the so-called “Balkan route”, showing the political instability of both the region and the EU. On the one hand, the Western Balkans Countries are still experiencing a process of transition and adaptation to EU standards (3). On the other hand, the disagreement in

respecting the principle of solidarity and fair sharing of responsibility between the same EU Member States, that should inform the EU policies on border checks, asylum and immigration according to article 80 TFEU, showed the political instability of the EU itself.

The massive flow of asylum seekers, most of them from third countries such as Syria, Afghanistan, Iraq and Eritrea, led, in fact, the EU institutions to recognize in April 2015 the exceptional nature of the situation, calling unsuccessfully for the adoption of solidarity measures to overcome the catastrophic humanitarian situation in the so-called "frontline Member States", such as the Hellenic Republic and the Italian Republic (4).

In this context, the European Commission's Pact on Migration and Asylum of 23 September 2020 represents a package of proposals that incorporates previous measures advanced by the Commission after this migration crisis. Despite the expectations and premises of the new Pact, it retains an emergency and state-centered approach that has so far characterized the measures adopted by the Union. Therefore, the crisis is still ongoing and, for certain aspects, unresolved and unsolvable, because it is a deeper crisis that concerns the values of the Union which is intended differently by the EU Member States.

2. The 2015 Migration Crisis and EU Decisions

By Decisions nos. (EU) 2015/1523 and 2015/1601 (5), adopted on the basis of articles 78, para. 3 (6), and 80 TFEU, the Council established, through temporary measures for the period 2015-2017, a compulsory system of migrants' relocation for the benefit of Italy and Greece (7), according to which neither the Member State of relocation nor the asylum seeker would have had a choice about the procedure. The other States could escape this mechanism only in the presence of "well-founded reasons of danger to national security or public order, or in the presence of serious reasons to apply the provisions on exclusion" from international protection (article 5, para. 7), or if the relocation State found itself in an emergency situation (article 9). According to the relocation procedure provided for by art. 5, Italy and Greece had to identify the applicants to be relocated, giving priority to vulnerable subjects and, following the approval of the relocation state to take "a decision as soon as possible for each identified applicant". Then, Member States were required, at regular intervals and at least every three months, to indicate the number of applicants they were able to swiftly relocate to their territory and any other relevant information (article 5, para. 2).

Despite these Decisions, such measures were contested by the Slovak Republic and Hungary, that brought two appeals to the Court of Justice, asking for the annulment of Decision (EU) 2015/1601, and Poland intervened in support of the two states with observations that confirmed a strong political tension (8). With a variety of grounds for appeal, the two States complained, in fact, defects deriving from the choice of an inappropriate legal basis, errors in the adoption procedure (9), as well as substantive defects consisting in the inability of the decision to respond to the migratory crisis. In particular, they argued the violation of the principle of proportionality (article 5, para. 4, TEU) because, in their opinion, the objective of the decision could be achieved "by other measures which could have been taken in the context of existing instruments and would have been less restrictive for Member States and impinged less on the 'sovereign' right

of each Member State to decide freely upon the admission of nationals of third countries to its territory and on the right of Member States” (para. 225).

With a judgement of the Grand Chamber of 6 September 2017 (10), the Court of Justice rejected the appeals, recalling that: the Council was effectively required to implement the principle of solidarity (and fair sharing of responsibility, para. 252); pursuant to article 78, para. 3, TFEU, the burdens deriving from the measures adopted had to be shared, in accordance with the principle of solidarity, among all the other Member States (para. 291); the very determination of the State of relocation had to be based on criteria connected with solidarity between the Member States (para. 329). Although the Court repeatedly recalls the principle of solidarity (11), in its reasoning it is perceived as instrumental to the adoption of necessary and temporary measures aimed at compensating the management of migratory flows in a moment of contingent crisis, and of an operational nature such as to legitimize the decision-making of the Council. In other words, it does not concern the entire construction of the EU, although, as rightly pointed out, the hostile attitude of EU Member States ended up questioning the European project itself (12).

3. The Failure of the Relocation Quota System

Therefore, these solidarity measures were not or only partially enforced, highlighting the limits of the existing regulatory framework, which was unable to offer an adequate response to such a situation. The reallocation system of 2015 Decisions had not worked out, and was perceived as an attempt to derogate to the Dublin Regulation (13), or to correct a flawed system that the Court had ended up endorsing (14).

The crisis had, in fact, simply exacerbated the failure of the relocation quota system and the limits of the Dublin III system, which did not provide (and still does not foresee) any mechanism to deal with situations of massive influx of potential beneficiaries of international protection (15): it was not conceived to carry out this function (16), despite the express reference to solidarity (recitals 22 and 25) (17).

Even the subsequent proposals to amend the Dublin Regulation (18) disappointed expectations. In the first proposal, the Commission did not introduce any revolutionary changes, essentially reproducing the mechanism for relocating quotas for asylum seekers put in place in 2015 and which proved to be inadequate and ineffective. In the second amendment proposal, the Commission confirmed the criteria of competence already in force and introduced a corrective relocation mechanism to be activated when necessary (19). Then, amendments put forward by the European Parliament's Commission on Civil Liberties, Justice and Home Affairs (LIBE) (20), highlighted the very different approaches of the EU institutions (21), determining the paralysis of the reform. Therefore, once again, there was need to intervene through emergency relocation measures on a voluntary basis, through an “experimental” joint declaration of intent between France, Germany, Italy and Malta in September 2019 (22) which, however, fails to be successful by Member States equally affected by migratory flows, at the meeting of the Justice and Home Affairs Council on 7 and 8 October 2019 (23).

Therefore, the system of relocation quotas confirmed a state-centric approach (24) and a conflicting perception of the principle of solidarity by the EU Member States. Solidarity in sharing responsibilities should be a constant in the Union's migration policy. Even if it needs to materialize in appropriate measures, any act that ends up disavowing its

application should be totally rethought because it is in conflict with article 67 TFEU (the Union “develops a common policy on asylum, immigration and external border control, based on solidarity between member states”). This is not the approach followed so far and it does not seem that the EU Pact on Migration and Asylum significantly changes this approach.

4. The Unconvincing Solutions of the EU Pact on Migration and Asylum

In this framework, the Pact adopted by the European Commission on 23 September 2020 (25) is a package of proposals and measures that are still to be approved by the Union (26). Presented by the Commission as a rupture with respect to the past, on the contrary it confirms the criteria of the country of first entry (27) and the need to identify acceptable solutions for the most recalcitrant Member States (28), without leaving room for an approach effectively based on a sense of solidarity and the protection of migrants’ rights. In particular, through two proposals for Regulations, respectively on the management of asylum and migration (29), and on situations of crisis and force *majeure* (30), the Commission distinguishes the different situations that can or must lead to a solidarity intervention. The aim would be to ensure a fair sharing of responsibilities and an effective management of irregular arrivals of migrants and asylum seekers not handled by individual Member States alone, but by the EU as a whole.

In this context, the Commission (31) enjoys wide discretion in deciding whether a situation of a State requires the adoption of solidarity measures. In consideration of the different situations and migratory pressures, it can propose a system of flexible contributions on a voluntary basis: only in situations of pressure would it become compulsory (32). In fact, the development of solidarity response plans is foreseen following an assessment of the migratory pressure by the Commission which will indicate the necessary measures, to which all other Member States will be required to contribute through relocations or sponsored returns or a combination of the same (articles 50 and 51).

For their part, the Member States will be called upon to provide solidarity contributions (pursuant to article 45) (33), but without necessarily being obliged (in particular in ordinary situations) and being able, in any case, to choose whether to resort to the form of relocation, sponsored repatriations, or can assist countries in strengthening capacities for border management, including by reinforcing their search and rescue capacities at sea or on land, through well-functioning asylum and reception systems, or by facilitating voluntary returns to third countries or the integration of migrants. The proposal takes up, from the previous experience of the 2015 Decisions, the financial incentives for each person relocated or whose repatriation has not been successful (article 61). Furthermore, a distribution key based on the size of the population (50%) and on the economy of the Member States (50% GDP) should be applied to all solidarity measures for determining the total contribution of each State (article 54).

5. Conclusions: A Crisis Without a Solution?

In the light of the considerations made so far, the emergence of the Balkan route as one of the main migratory routes to Europe has shown the vulnerability of the Western

Balkans' legal systems, shaking the enlargement process that still struggles to take off. The Slovenian Presidency of the Council, that hosted on 6th October 2021 in Brdo pri Kranju the European Union-Western Balkans summit, could give new emphasis to the enlargement process. The Brdo Declaration states that: "The EU reconfirms its commitment to the enlargement process and its decisions taken thereon, based upon credible reforms by partners, fair and rigorous conditionality and the principle of own merits. We will further intensify our joint engagement to take forward the region's political, economic and social transformation, while acknowledging the progress made by the Western Balkans. We also recall the importance that the EU can maintain and deepen its own development, ensuring its capacity to integrate new members".

However, according to other authors (34), it has, at the same time, exposed the EU to a crisis of values, revealing a latent lack of "*idem sentire*" of the Member States. The common front of the Visegrad Group has not only gone against the migration policy of the Union, but has clearly contested the limitations of sovereignty resulting from the application of the solidarity's principle. This rigid entrenchment on positions of claiming sovereignty seemed to undermine the process of over fifty years of European integration. This danger is evident from the pleas put forward by Poland, that, on the basis of Hungary's 10th plea, alleged that the imposition of binding quotas on it had disproportionate effects in its regard, as well as on a number of host Member States which, in order to meet their relocation obligations, have to make far greater efforts and bear far heavier burdens than other host Member States. This, particularly, in the case of Member States which are "virtually ethnically homogeneous, like Poland" and whose populations are different, from a cultural and linguistic point of view, from the migrants to be relocated on their territory (para. 302). The Court, while declaring the argument inadmissible because it was put forward in a statement in intervention and far beyond the argument made by Hungary, which is strictly limited to Hungary's own situation (para. 303), took the opportunity to clarify that: "[i]f relocation were to be strictly conditional upon the existence of cultural or linguistic ties between each applicant for international protection and the Member State of relocation, the distribution of those applicants between all the Member States in accordance with the principle of solidarity laid down by Article 80 TFEU and, consequently, the adoption of a binding relocation mechanism would be impossible" (para. 304). In addition, the Court pointed out that: "considerations relating to the ethnic origin of applicants for international protection cannot be taken into account since they are clearly contrary to EU law and, in particular, to Article 21 of the Charter of Fundamental Rights of the European Union" (para. 305).

Hence the question of whether it is a crisis that can be resolved through the solidarity mechanisms of the Pact, or whether it is a crisis that overwhelms the idea of a *solidarité de fait* invoked by Robert Schuman in 1951, which gave way to the Communities and then to a process of integration towards an ever-closer union between the peoples of Europe, seems to be rightly raised. After more than fifty years and on the basis of a series of treaties that have evolved over time, the EU is a legal system with its own identity pursuant to the values set out in article 2 TEU. It distinguishes between fundamental values (human dignity, equality, democracy, rule of law, etc.) and other values of human society, such as pluralism, non-discrimination, tolerance, justice and solidarity which should be common to the Member States. This common substratum (35) seems absent or, in any case, it does not seem adequately protected. The latest crises experienced by the

Union have highlighted a deeper crisis of identity that is struggling to balance the coexisting interests that characterize the EU legal system (36).

References

- (1) See the Presidency Conclusions of Lisbon European Council of 23 and 24 March 2000: “[t]he European Council reaffirms that the peace, prosperity and stability of South East Europe are a strategic priority for the European Union”.
- (2) According to F. TRAUNER, I. KRUSE, *EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood*, in *CEPS Working Documents*, No. 290, April 2008, available at <https://www.ceps.eu/ceps-publications/ec-visa-facilitation-and-readmission-agreements-implementing-new-eu-security-approach/>, these agreements between the EU and Albania, Bosnia and Herzegovina (ByH), Macedonia (FYROM), Montenegro and Serbia entered into force between 2006-2008, “offering speeded up visa procedures for citizens of those countries in exchange for stepped up migration cooperation, primarily aiming to curb irregular migration to the EU”.
- (3) For a critical view, see N. KOGOVSEK ŠALAMON, *Asylum Systems in the Western Balkan Countries: Current Issues*, in *International Migration*, Vol. 54, No. 6, 2016, pp. 151-163. Furthermore, the EU enlargement to the Western Balkans is marked by continued roadblocks and unjustified delays.
- (4) As is known, the Court of Justice stated that the Republic of Poland, Hungary and the Czech Republic failed to fulfil their obligations under article 5, para. 2 of Decision (EU) 2015/1523 and article 5, para. 2 of Decision (EU) 2015/1601, and have consequently failed to fulfil the subsequent relocation obligations under article 5, paras. 4 to 11 of each of those two decisions. These decisions were adopted to establish provisional measures in the area of international protection for the benefit of Italy and Greece on the basis of article 78, para. 3 TFEU and according to article 80 TFEU. See CJEU (Third Chamber), judgment of 2 April 2020, joined cases C-715/17, C-718/17 and C-719/17 *European Commission v Republic of Poland and Others*.
- (5) These are 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*, in OJ L 239 of 15 September 2015, pp. 146-156; Council Decision (EU) 2015/1601 of 22 September 2015 *establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, in OJ L 248 of 24 September 2015, pp. 80-94. See M. BORRACCETTI, “*To Quota*” or “*Not to Quota*”? *The EU Facing Effective Solidarity in Its Asylum Policy*, in *Eurojus*, 31 July 2015; M. DI FILIPPO, *Le misure sulla ricollocazione dei richiedenti asilo adottate dall’Unione europea nel 2015: considerazioni critiche e prospettive*, in *Diritto, Immigrazione e Cittadinanza*, No. 2, 2015, pp. 33-60; P. MORI, *La decisione sulla ricollocazione delle persone bisognose di protezione internazionale: un irrituale ricorso al metodo intergovernativo?*, in *Il Diritto dell’Unione europea, Osservatorio europeo*, September 2015; A. DI PASCALE, *Il ricollocamento: appena nato è già finito?*, in *Eurojus*, 12 February 2016.
- (6) Article 78 TFEU, para. 3, states: “[i]n the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament”.
- (7) Only Decision (EU) 2015/1601 laid down, in Annexes I and II, entitled respectively “Allocations from Italy” and “Allocations from Greece”, pre-established reallocation quotas in the Member States which will then be challenged by Slovakia and Hungary. On the contrary, Decision (EU) 2015/1523 implemented the political agreement reached by the Member States in the Council Resolution of 20 July 2015.
- (8) See CJEU (Grand Chamber), judgement of 6 September 2017, joined cases C-643/15 and C-647/15, *Slovak Republic and Hungary v Council of the European Union*, in particular paras. 302-305.
- (9) See A. CIRCOLO, O. HAMULÁK, P. LYSINA, *The Principle of Solidarity between Voluntary Commitment and Legal Constraint: Comments on the Judgment of the CJEU Union in C-643/15 and C-647/15*, in *Czech Yearbook of International Law*, No. 9, 2018, pp. 155-173. On the contrary, in a critical perspective, see H. LABAYLE, *Solidarity Is Not a Value: Provisional Relocation of Asylum-Seekers Confirmed by the Court of Justice (6 September 2017, Joined Cases C-643/15 and C-647/15 Slovakia and Hungary v Council)*, in *EU Immigration and Asylum Law and Policy*, 11 September 2017.

(10) See, CJEU, *Slovak Republic and Hungary v Council of the European Union*, cit. supra note 8, F. CHERUBINI, *La Corte di giustizia in merito alla decisione del Consiglio sulla ricollocazione: riflessioni sulla politica di asilo dell'UE*, in *Quaderni costituzionali*, No. 4, 2017, pp. 923-926; C. FASONE, *La Corte di giustizia in merito alla decisione del Consiglio sulla ricollocazione: gli effetti sui legislatori e sulle procedure (non) legislative dell'Unione*, in *Quaderni costituzionali*, No. 4, 2017, pp. 927-930; M. MESSINA, *La Corte di Giustizia afferma la validità giuridica del meccanismo provvisorio di ricollocazione obbligatoria dei richiedenti protezione internazionale. A quando la volontà di alcuni Stati membri UE di ottemperarvi?*, in *Ordine internazionale e diritti umani*, No. 4, 2017, pp. 603-607; S. PENASA, *La "relocation" delle persone richiedenti asilo: un sistema legittimo, giustificato e ... inattuato? Brevi riflessioni sulla sentenza Slovacchia e Ungheria c. Consiglio*, in *Diritto Pubblico Comparato ed Europeo*, No. 3, 2017, p. 29; A. CIRCOLO, *Il principio di solidarietà tra impegno volontario e obbligo giuridico. La pronuncia della Corte di giustizia (GS) nel caso Slovacchia e Ungheria c. Consiglio*, in *Diritto Pubblico Comparato ed Europeo*, No. 1, 2018, pp. 197-210; L. TSOURDI, *Confrontation on Relocation – The Court of Justice Endorses the Emergency Scheme for Compulsory Relocation of Asylum Seekers Within the European Union: Slovak Republic and Hungary v. Council*, in *Common Market Law Review*, Vol. 55, No. 5, 2018, pp. 1457-1494.

(11) In this sense, see U. VILLANI, *Immigrazione e principio di solidarietà*, in *Freedom, Security & Justice: European Legal Studies*, No. 3, 2017, pp. 1-4.

(12) As is known, the Advocate General Bot delivered a different opinion. After pointing out that solidarity is surprisingly absent from the list of the first sentence of article 2 TEU of the values on which the Union is founded, he stresses that the Union promotes not only solidarity between generations but also solidarity between Member States (para. 19). Therefore, Decision (EU) 2015/1601 constitutes an expression of the solidarity that the Treaty envisages between Member States. This solidarity “has a specific content and a binding nature” which legitimizes the contested decision, that has a strong political nature aimed at stirring the opposition on the part of Member States supporting freely consented solidarity based solely on voluntary commitments (para. 23). In his view, these appeals offered an opportunity to remember that solidarity is one of the basic values of the Union: “[t]he present actions provide me with the opportunity to recall that solidarity is among the cardinal values of the Union and is even among the foundations of the Union. How would it be possible to deepen the solidarity between the peoples of Europe and to envisage ever-closer union between those peoples, as advocated in the Preamble to the EU Treaty, without solidarity between the Member States when one of them is faced with an emergency situation? I am referring here to the quintessence of what is both the *raison d’être* and the objective of the European project” (para. 17). See also the reflections of M. OVÁDEK, *Legal Basis and Solidarity of Provisional Measures in Slovakia & Hungary v Council*, in *European Database of Asylum Law*, 4 December 2017.

(13) The Court recalls, among the pleas advanced by the Slovak Republic and Hungary, in para. 49 of the judgment of 6 September 2017, that: “[a]lthough the contested decision classifies these amendments as mere ‘derogations’, the distinction between a derogation and an amendment is, in the applicants’ view, artificial, since, in both cases, the effect is to exclude the application of a normative provision and, by the same token, to undermine its effectiveness”.

(14) In a critical view, H. LABAYLE, *Solidarity Is Not a Value*, cit., who considered that, by confirming the validity of the contested Decisions, the Court of Justice has ended up defending the Dublin system, without stimulating a structural reform.

(15) Regulation (EU) 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*, in OJ L 180 of 29 June 2013, pp. 31-59. See the reflections of M. DI FILIPPO, *The Dublin Saga and the Need to Rethink the Criteria for the Allocation of Competence in Asylum Procedures*, in V. MITSILEGAS, V. MORENO-LAX, N. VAVOULA (eds.), *Securitising Asylum Flows. Deflection, Criminalisation and Challenges for Human Rights*, Leiden, 2020, pp. 196-235.

(16) According to J. BAST, *Deepening Supranational Integration: Interstate Solidarity in EU Migration Law*, in *European Public Law*, Vol. 22, No. 2, 2016, pp. 289-304, “it is already evident from this outline of the Dublin System that it was not conceived as a system of solidarity. Quite the contrary: it was established as a ‘delimitation of responsibilities without a sharing of burdens between the States. The principle of the country of first asylum is ill-suited to operate as a rule establishing solidarity within the Common European Asylum System because it cannot compensate for the uneven burdens caused by the different geographic locations and established migration patterns. Indeed, this principle intensifies these effects by making further migration within Europe more difficult”.

(17) According to E. KÜÇÜK, *The Principle of Solidarity and Fairness in Sharing Responsibility: More than Window Dressing ?*, in *European Law Journal*, Vol. 22, No. 4, 2016, pp. 448-469, the Dublin system would give rise to a constitutional violation.

(18) In general on the amendments of Dublin Regulation, see, among others, S. FRATZKE, *Not Adding Up. The Fading Promise of Europe's Dublin System*, March 2015; E. BROUWER, R. SEVERIJNS, *Sharing responsibility: A Proposal for a European Asylum System Based on Solidarity*, in *EU Immigration and Asylum Law and Policy*, 17 February 2016; F. MAIANI, *The Dublin III Regulation: A New Legal Framework for a More Humane System?*, in V. CHETAIL, P. DE BRUYCKER, F. MAIANI (eds.), *Reforming the Common European Asylum System: The New European Refugee Law*, Leiden-Boston, 2016, pp. 99-142; P. MORI, *La proposta di riforma del sistema europeo comune d'asilo: verso Dublino IV?*, in *Eurojus*, 7 September 2016; F. MUNARI, *The Perfect Storm on EU Asylum Law: The Need to Rethink the Dublin Regime*, in *Diritti umani e diritto internazionale*, No. 3, 2016, pp. 517-547; C. DISTASIO, *La crisi del "Sistema Europeo Comune di Asilo" (SECA) fra inefficienze del sistema Dublino e vacuità del principio di solidarietà*, in *Il Diritto dell'Unione europea*, No. 2, 2017, pp. 209-249; C. FAVILLI, *La crisi del sistema Dublino: quali prospettive?*, in M. SAVINO (a cura di), *La crisi migratoria tra Italia e Unione europea: diagnosi e prospettive*, Naples, 2017, pp. 279-302; M. DI FILIPPO, *The Allocation of Competence in Asylum Procedures under EU Law: The Need to Take the Dublin Bull by the Horns*, in *Revista de Derecho Comunitario Europeo*, No. 59, 2018, pp. 41-95; T.M. MOSCHETTA, *I criteri di attribuzione delle competenze a esaminare le domande d'asilo nei recenti sviluppi dell'iter di riforma del regime di Dublino*, in *Federalismi.it*, No. 5, 2018; D. VITIELLO, *The Dublin System and Beyond: Which Way Out of the Stalemate?*, in *Diritti umani e diritto internazionale*, Vol. 12, No. 3, 2018, pp. 463-480.

(19) See 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)*, COM/2016/0270 final - 2016/0133 (COD), no longer in force, where the Commission confirmed: "[t]he objectives of the Dublin Regulation – to ensure quick access of asylum applicants to an asylum procedure and the examination of an application in substance by a single, clearly determined, Member State – remain valid. It is clear, however, that the Dublin system must be reformed, both to simplify it and enhance its effectiveness in practice, and to be equal to the task of dealing with situations when Member States' asylum systems are faced with disproportionate pressure". In a critical view, see F. MAIANI, *Responsibility, Allocation and Solidarity*, in P. DE BRUYCKER, M. DE SOMER, J.L. DE BROUWER (eds.), *From Tampere 20 to Tampere 2.0: Towards a New European Consensus on Migration*, Brussels, 2019, p. 103 ff.

(20) See the Report of Cecilia Wikström, 6 November 2017, (A8-0345/2017) and F. MAIANI, C. HRUSCHKA, *The Report of the European Parliament on the Reform of the Dublin System: Certainly Bold, but Pragmatic?*, in *EU Immigration and Asylum Law and Policy*, 20 December 2017.

(21) In particular, the European Parliament wanted the establishment of a permanent system of allocation of quotas based on a list of preferences of the applicant (so-called bottom four). On the contrary, "(...) neither the Dublin III Regulation nor the reform proposals take into account the preferences of the asylum seekers when it comes to the host state". So, E. KÜÇÜK, *The Principle of Solidarity*, cit., p. 462.

(22) See *Joint Declaration of Intent on a Controlled Emergency Procedure - Voluntary Commitments by Member States for a Predictable Temporary Solidarity Mechanism*, 23 September 2019.

(23) See G. MORGESE, *Dublin System, «Scrooge-Like» Solidarity and the EU Law: Are There Viable Options to the Never-Ending Reform of the Dublin III Regulation?*, in *Diritto, Immigrazione e Cittadinanza*, No. 3, 2019, pp. 85-101, in part. p. 93.

(24) Although with reference to the resettlement measures adopted by the Union in the external migration policy, see the critical considerations of S. POLI, *"Flexible" Cooperation Between the European Union and Third Countries to Contain Migration Flows and the Uncertainties of "Compensation Measures": The Case of the Resettlement of Refugees in EU Member States*, in *Diritto Pubblico Comparato ed Europeo online*, No. 4, 2020, pp. 5272-5299, who underlines: "logic, which is State-centred, fails to appreciate what the needs of the EU as a whole are and shows little awareness and sensitivity with respect to the degree of instability and concerns coming from the Southern neighbours. Furthermore, this approach is not in line with the principle of loyal cooperation that Member States have with the EU institutions in the context of EU external relations". See, also, N. ZAUN, *States as Gatekeepers in EU Asylum Politics: Explaining the Non-Adoption of a Refugee Quota System*, in *Journal of Common Market Studies. Special Issue: EU Refugee Policies and Politics in Times of Crisis*, Vol. 56, No. 1, 2017, pp. 44-56.

(25) In general, references concerning the Pact can include: G. CAMPESI, *The EU Pact on Migration and Asylum and the Dangerous Multiplication of 'Anomalous Zones' for Migration Management*, in *ASILE Forum Contributions on the new EU Pact on Migration and Asylum*, 27 November 2020; J.P. CASSARINO, L. MARIN, *The New Pact on Migration and Asylum: Turning European Union Territory into a Non-Territory*, in *EU Law Analysis*, 30 November 2020; P. DE PASQUALE, *Dal Nuovo Patto per la migrazione e l'asilo a un diritto dell'emergenza dell'Unione europea: a che punto è la notte?*, in *Diritto Pubblico Comparato ed Europeo*, No. 3, 2020, pp. V-XVI; M. FUNK, *New Pact, Old Problems*, in *International Politics and Society*, 25 September 2020; E. KARAGEORGIOU, *The New Pact on Migration and Asylum: Why Pragmatism Cannot Engender Solidarity*, in *Nordic Journal of European Law*, No. 2, 2020, pp. III-VIII; F. MAIANI, *A "Fresh Start" or One More Clunker? Dublin and Solidarity in the New Pact*, in *EU Immigration and Asylum Law and Policy*, 20 October 2020; S. MANSERVISI, *The EU's Pact on Migration and Asylum: A Tsunami of Papers but Little Waves of Change*, in *IAI Commentaries*, No. 88, 2020, pp. 1-8; A.H. NEIDHARDT, O. SUNDBERG DIEZ, *The Upcoming New Pact on Migration and Asylum: Will It Be Up to the Challenge? Discussion Paper*, 29 April 2020; S. PENASA, *Il Nuovo Patto e l'idea di solidarietà: principio fondativo del sistema europeo di asilo o metodo di allocazione delle responsabilità tra Stati membri?*, in *ADiM Blog, Analisi & Opinioni*, 30 November 2020; D. ARCHIBUGI, M. CELLINI, M. VITIELLO, *Refugees in the European Union: From Emergency Alarmism to Common Management*, in *Journal of Contemporary European Studies*, 10 April 2021; G. CORNELISSE, M. RENEMAN, *Border Procedures in the Commission's New Pact on Migration and Asylum: A Case of Politics Outplaying Rationality?*, in *European Law Journal*, 23 March 2021; M. MOUZOURAKIS, *More Laws, Less Law: The European Union's New Pact on Migration and Asylum and the Fragmentation of "Asylum Seeker" Status*, in *European Law Journal*, 7 May 2021; F. SPINELLI, *United against the Pact: The Fatal Flaws in the EU's Plans to Reform its Asylum System*, in *Green European Journal*, 17 March 2021.

(26) E. CODINI, M. D'ODORICO, *Towards More Solidarity? Preliminary Remarks on the New Pact on Migration and Asylum*, 8 October 2020, consider the Pact timid document that will likely be subject to Member States' restrictive negotiations in the upcoming months.

(27) According to C. FAVILLI, *Il patto europeo sulla migrazione e l'asilo: "c'è qualcosa di nuovo, anzi d'antico"*, in *Questione Giustizia*, 2 October 2020, the Dublin Regulation disappears formally, but its shadow, the Dublin system, remains in substance.

(28) P. VAN WOLLEGHEM, *Riformare Dublino e attivare la solidarietà: gli obiettivi del Nuovo Patto UE sulla migrazione e l'asilo*, in *Osservatorio sulla democrazia. Fondazione Feltrinelli*, 6 October 2020, considers that the approach of the Commission aimed at gathering the consensus of the member states on the New Pact through maximum flexibility in the choice between instruments. Flexibility and equivalence between measures are essential for the success of this text.

(29) Proposal for a Regulation, *on asylum and migration management*, COM(2020) 610 of 23 September 2020.

(30) Proposal for a Regulation, *addressing situations of crisis and force majeure in the field of migration and asylum*, COM(2020) 613 of 23 September 2020.

(31) The Commission would be a solidarity promoter especially in situations of migratory pressure, although with a margin of discretion that could lead it to adopt too "accommodating" solutions, in order not to upset some states. In this sense, see G. MORGESE, *La "nuova" solidarietà europea in materia di asilo e immigrazione*, cit., in part. p. 35. According to A. DI PASCALE, *Il nuovo patto per l'immigrazione e l'asilo: scontentare tutti per accontentare tutti*, in *Eurojus*, October 2020, the Pact would generally adopted a compromise approach.

(32) So P. DE PASQUALE, *Il Patto per la migrazione e l'asilo: più ombre che luci*, in *I Post di AISDUE*, II (2020), Focus "*La proposta di Patto su immigrazione e asilo*", No. 1, 5 October 2020.

(33) Member States shall have to specify the type of contributions of their solidarity response plan sent to the Commission.

(34) E.M. GOŹDZIAK, I. MAIN, I.B. SUTER (eds.), *Europe and the Refugee Response: A Crisis of Values?*, London, 2020.

(35) On the idea of a social values' "background", see T. RUSSO, *Articolo 2 TUE*, in C. CURTIGIALDINO (dir.), *Codice dell'Unione europea operativo. TUE e TFUE commentati articolo per articolo*, Naples, 2012, p. 60.

(36) According to article 13, para. 1, TEU: "[t]he Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions".