

# Regulation on Asylum and Migration Management

## The Right Formula to end the EU's Longstanding Controversies?

### Executive summary

*The Regulation on Asylum and Migration Management (RAMM) is one of the most important and politically sensitive proposals of the Commission's New Pact on Migration and Asylum of 23 September 2020. While many Member States share the proposal's goal to establish a system of solidarity and responsibility sharing, they disagree over the exact form it should take. The following publication analyses the RAMM proposal by, firstly, explaining its content and the rationale behind it and, secondly, looking at the state of the art of negotiations and possible developments. Overall, this proposal is unlikely to bring any substantial relief to countries of first entry. This is because – assuming that what is being proposed is feasible – it gives frontline countries no guarantee that others will offer enough relocation places to offset the additional burdens that other proposals in the Pact, notably those for mandatory screening and border procedures, would place on their administrations.*

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## What is the Regulation on Asylum and Migration Management, and why does the EU need it?

Flashback to 2015. More than one million people land on Europe's southern shores in seek of refuge.<sup>1</sup> Unprepared to deal with an unprecedented number of arrivals, EU Member States (MSs) start blaming each other for the human and political consequences of this humanitarian crisis. The countries less affected by it refuse to take in asylum seekers from Greece and Italy, accusing their southern counterparts of failing to control their borders and being responsible for migrants moving uncontrolled within Schengen. Greece and Italy, for their part, feel left alone to police the external borders for the whole of the EU. Germany tries to broker a solution by opening its borders to Syrians and urging other MSs to follow suit while also calling for improved border management, but all in vain.

Fast forward six years, and MSs are still arguing over the right formula to balance **responsibility** (i.e., the duty to control national borders and territory) and **solidarity** (i.e., the duty to support other MSs in dealing with migration).

It is this formula that the European Commission claims to have found in the **New Pact on Migration and Asylum**,<sup>2</sup> of which the **Regulation on Asylum and Migration Management (RAMM)**<sup>3</sup> is a key pillar. Presented on 23 September 2020 and touted as a "fresh start on migration",<sup>4</sup> the Pact aims at reforming the Common European Asylum System (CEAS) and increasing opportunities for legal migration to the EU (for a complete overview of the Pact, see our analysis<sup>5</sup>).

Anticipating the publication of the Pact in her State of the Union Address, Commission President Ursula von der Leyen had proudly announced that "we will abolish the Dublin Regulation and we will replace it with a new European migration governance system. It will have common structures on asylum and return and it will have a new strong solidarity mechanism".<sup>6</sup> The **abolishment of the Dublin III Regulation** and the

<sup>1</sup> UNHCR (2021). *Situation in the Mediterranean*. Available at: <https://data2.unhcr.org/en/situations/mediterranean> (Accessed: 18 June 2021).

<sup>2</sup> European Commission (2020). "Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020." Available at: [https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020\\_en](https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en) (Accessed: 18 June 2021).

<sup>3</sup> European Commission (2020). *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/2020/610 final)*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:610:FIN> (Accessed: 18 June 2021).

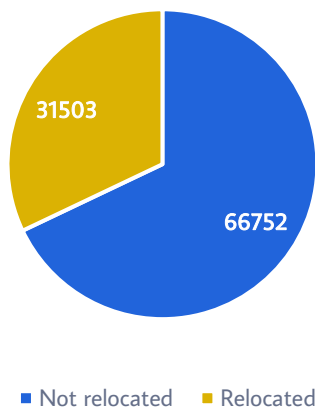
<sup>4</sup> European Commission (2020). "A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity." Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706) (Accessed: 18 June 2021).

<sup>5</sup> Guibert, L., Milova, M., & Movileanu, D. (2021). "The New Pact on Migration and Asylum: A Brief Summary and Next Steps." Available at: <https://89initiative.com/wp-content/uploads/2021/03/L.-Guibert-M.-Milova-D.-Movileanu-New-Pact-on-Asylum-and-Migration.pdf> (Accessed: 18 June 2021).

<sup>6</sup> ANSA & InfoMigrants (2020). "EU chief vows to replace Dublin rule for asylum seekers." Available at: <https://www.infomigrants.net/en/post/27380/eu-chief-vows-to-replace-dublin-rule-for-asylum-seekers> (Accessed: 18 June 2021).

establishment of a [solidarity mechanism](#) are precisely the two goals of the RAMM. However, before discussing whether and how the proposed text seeks to achieve these objectives, we briefly explain what the Dublin III Regulation is, how it led to the situation that we had in 2015, and why it requires a corrective solidarity mechanism.

### Solidarity in Practice: Relocations between 2015 and 2017



*Fig. 1 – Relocations (2015-2017)*

In September 2015, EU MSs agreed to relocate a total of 120,000 asylum seekers from Greece and Italy by September 2017. As of fall 2017, out of the 98,255 pledges made, MSs had relocated only 31,503 asylum seekers. In June 2017, the Commission launched infringement procedures against the Czech Republic, Hungary, and Poland for refusing to comply with the relocation decisions (CZ took in 12 asylum seekers, HU and PL none).

Source: European Commission, 2017.

## The Dublin Regulation and the Rationale for a Solidarity Mechanism

The [Dublin III Regulation](#),<sup>7</sup> which is a 2013 version of a text first adopted in 1990, is the piece of EU legislation that determines which MS is responsible for an asylum claim. The responsibility criteria are, in order of priority, family unity, possession of residence permits and visas, irregular entry or stay, visa-waived entry, applications in an international transit area of an airport, and the first country in which the application is lodged. This means that, if, for example, a third country national enters the EU through Italy and applies for asylum there while also having a spouse in Germany, she can be reunited with her spouse and have her application assessed in Germany.

The problem is that in practice MSs do not respect the hierarchy of criteria and mostly apply the “first country of entry” principle (that is, the last criterion listed above). A recent report by the European Parliament finds that transfer requests for family reunification are accepted only in 48% of cases due to difficulties in proving family links, with most applicants having to remain in their country of first entry.<sup>8</sup> As a result, MSs such as Greece, Italy, and more recently Spain, which are the main gateways into the EU, have often had to deal with a number of irregular arrivals and asylum applications which exceeds their capacity.

This explains the political crisis of 2015: southern MSs, forced by the Dublin rules to take care of an unprecedented number of arrivals, felt overwhelmed and unable – and, sometimes, unwilling – to prevent migrants’ onward movement towards northern MSs, which in turn started shutting their borders. If MSs are

unwilling to delete the “first country of entry” principle, the only solution to avoid a repetition of that crisis is to establish a solidarity mechanism that allows for the physical transfer of asylum seekers from countries under pressure to other MSs. Nevertheless, negotiations over a relocation mechanism have failed since 2016 due to many MSs’ reluctance to admit asylum seekers.

## The RAMM Proposal

The [RAMM proposal](#), just like the Pact more broadly, is mainly designed to appease the hardliners and break the political impasse on solidarity and responsibility sharing. The provisions meant to appease countries of first entry – such as Greece, Italy, Malta, and Spain – and destination – mainly France and Germany – do not, in fact, live up to expectations. This is because [the RAMM does not abolish the Dublin Regulation](#) as promised by the Commission, but rather modifies it slightly. The main novelties concern the streamlining and simplification of the evidentiary requirements to prove family links and the addition of new responsibility criteria, such as the inclusion of siblings in the definition of “family members” and the attainment of educational qualifications in a MS.

These changes aim at increasing the use of responsibility criteria other than the “first country of entry” principle and discouraging secondary movements – the idea being that, if an asylum seeker is transferred to a country with which she has some connections, she will not feel the need to move to another country. In practice, however, experts warn that these are only timid modifications that will leave the situation at the EU’s borders essentially unchanged.<sup>9</sup> This is because it is unclear why MSs should be expected to comply with the new responsibility criteria when they have failed to respect the existing ones for two decades.

Another source of disappointment for border MSs is the [new solidarity mechanism](#) proposed in the RAMM, which is supposed to counterbalance the increased responsibility demanded from them in the other proposals. This new mechanism would be – in what seems to be a contradiction in terms – both mandatory and flexible. In other words, all MSs would be required to contribute, but they would be allowed to choose the form of their contribution, which can be [relocation](#) (physical transfer of asylum seekers and refugees), [return sponsorship](#) (taking care of the return of a rejected asylum seeker from the territory of another MSs), and [capacity building](#) (this option can take many forms, including the provision of funds and human resources and actions in the external dimension of migration management). The proposal envisages two

<sup>7</sup> REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:en:PDF> (Accessed: 18 June 2021).

<sup>8</sup> European Parliament (2020). *Report on the Implementation of the Dublin III Regulation (2019/2206(INI))*. Available at: [https://www.europarl.europa.eu/doceo/document/A-9-2020-0245\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-9-2020-0245_EN.pdf) (Accessed: 18 June 2021).

<sup>9</sup> Maiani, F. (2020). “A ‘Fresh Start’ or One More Clunker? Dublin and Solidarity in the New Pact.” Available at: <https://eumigrationlawblog.eu/a-fresh-start-or-one-more-clunker-dublin-and-solidarity-in-the-new-pact/> (Accessed: 18 June 2021).

solidarity mechanisms that would function almost identically: one for cases of disembarkation following search and rescue operations and one for situations of pressure.

While the Commission's insistence on flexibility is a pragmatic choice to get reluctant MSs on board after fierce opposition to its 2016 proposal for mandatory relocation, it also raises concerns about the feasibility and predictability of the proposed mechanism.<sup>10</sup> If, for instance, MSs are free to contribute as they like, it is difficult to assess the impact of the mechanism on the rights of asylum seekers and migrants. While the Commission has foreseen a correction mechanism to ensure that a minimum solidarity threshold is reached, frontline MSs have no guarantee that other countries will offer enough relocation places to truly bring relief to their national asylum, reception, and detention systems. As EuroMed Rights noted in a recent analysis, the option of sponsoring returns, in addition to exposing migrants to human rights violations, would also put a strain on the detention capacity of frontline MSs, where returnees would have to stay for a maximum of eight months before being transferred to the sponsoring state if return fails.<sup>11</sup>

Furthermore, other proposals in the Pact envisage a system where people remain stuck at the border for several months in order to undergo mandatory screening and border procedures. This system would put additional pressure on the national administrations of countries such as Italy and Spain, which would need seven times their current reception capacity in order to deal with the people trapped at their borders.<sup>12</sup> As a result, if the RAMM allows MSs not to contribute with relocation, frontline MSs will be left with an increasing number of asylum seekers and returnees on their territory.

Overall, the RAMM proposal risks adding layers of complexity to a system that is already overly bureaucratic at the expense of the rights of asylum seekers and refugees. Taken in isolation from the rest of the Pact, the RAMM could be seen as an improvement over the current system, where solidarity contributions are entirely ad hoc and dependent on states' own initiative, in the sense that it would initiate a process of gradual transfer of competences over solidarity to EU institutions. However, the **flexible solidarity** proposed in the RAMM fails to offset the additional **mandatory responsibilities** placed on frontline MS by other proposals.

## What is the state of the negotiations?

Negotiations on the RAMM proposal are in the early stage of the ordinary legislative procedure (OLP), which is the main procedure to adopt directives and regulations in the EU. The Commission presented the RAMM proposal as part of the Pact on 23 September 2020. The Economic and Social Committee<sup>13</sup> and the

<sup>10</sup> ECRE (2021). *ECRE comments on Commission proposal for a Regulation on Asylum and Migration Management*. Available at: <https://www.ecre.org/wp-content/uploads/2021/03/ECRE-Comments-RAMM.pdf> (Accessed: 18 June 2021).

<sup>11</sup> EuroMed Rights (2021). *The New Pact on Migration and Asylum*. Available at: <https://euromedrights.org/wp-content/uploads/2020/11/LAYOUT-MIGRATION-EN-fin-1.pdf> (Accessed: 18 June 2021).

<sup>12</sup> *Ibid.*

<sup>13</sup> European Economic and Social Committee (2021). *A New Pact on Migration and Asylum*. Available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/new-pact-migration-and-asylum> (Accessed: 18 June 2021).

Committee of the Regions,<sup>14</sup> which have a consultation role under the OLP, adopted their opinions on 27 January and 19 March 2021, respectively. Overall, both institutions criticise the RAMM proposal for failing to set up a meaningful solidarity mechanism and question the feasibility of the proposed system, especially for what concerns return sponsorship. On the other hand, the two co-legislators, the European Parliament (EP) and the Council, are working to define their respective positions before entering inter-institutional negotiations.

In the EP, the committee responsible for the RAMM proposal (and the Pact in general) is the Committee on Civil Liberties, Justice, and Home Affairs (LIBE), and the Rapporteur is the Swedish MEP Tomas Tobé from the European People's Party (EPP) Group. While all political groups share a general scepticism about the feasibility of the solidarity mechanism envisaged in the Pact, the Socialists and the Greens are the most vocal advocates of a mandatory relocation mechanism.<sup>15</sup> Other groups, instead, have not taken any strong stance against the proposed flexible mechanism, arguably due to fears that proposing a mandatory instrument would block negotiations in the Council as happened with the 2016 Dublin IV proposal.<sup>16</sup>

More complex is the situation in the Council, where the issue of solidarity and responsibility sharing has created deep divides between MSs over the years. The Visegrád countries (Czech Republic, Hungary, Poland, and Slovakia), which have traditionally held the hardest line on migration in the EU, rejected the Commission's proposal immediately after its presentation.<sup>17</sup> The RAMM proposal does not fully satisfy frontline MSs either. In a joint statement of March 2021, interior ministers of the so-called MED5 (Cyprus, Greece, Italy, Malta, and Spain) insisted that solidarity should be mandatory and called for compulsory relocation.<sup>18</sup> Germany and France, which want to stop secondary movements, are more supportive of the Commission's proposal and will probably mediate between the opposing sides, as Germany already tried to do during its Presidency.<sup>19</sup> The Portuguese Presidency, however, has mainly focused on the external dimension

<sup>14</sup> European Committee of the Regions (2021). *New Pact on Migration and Asylum*. Available at: <https://cor.europa.eu/EN/our-work/Pages/OpinionTimeline.aspx?opId=CDR-4843-2020> (Accessed: 18 June 2021).

<sup>15</sup> Ríos, B. (2020). "Migration Pact: EU lawmakers ask for greater clarity." Available at: <https://euranetplus-inside.eu/migration-pact-eu-lawmakers-ask-for-greater-clarity/> (Accessed: 18 June 2021).

<sup>16</sup> Pollet, K. (2019). "All in vain? The fate of EP positions on asylum reform after the European elections." Available at: <https://eumigrationlawblog.eu/all-in-vain-the-fate-of-ep-positions-on-asylum-reform-after-the-european-elections/> (Accessed: 18 June 2021).

<sup>17</sup> Zalan, E. (2020). "Visegrad countries immediately push back on new migration pact." Available at: <https://euobserver.com/justice/149537> (Accessed: 18 June 2021).

<sup>18</sup> Tagaris, K. (2021). "Europe's south calls for more solidarity in new EU migration pact." Available at: <https://www.reuters.com/article/us-europe-migrants-idUSKBN2BC0JY> [Accessed: 18 June 2021].

<sup>19</sup> German Council Presidency (2021). *Presidency progress report on key elements of a European Migration and Asylum policy and the way forward*. Available at: <https://www.eu2020.de/blob/2427378/79ff059a5f9cea1ed904aaf5cc15fa36/12-15-pm-viko-jha-fortschrittsbericht-en-data.pdf> (Accessed: 18 June 2021).

<sup>20</sup> Portuguese Council Presidency (2021). *Portuguese Presidency highlights advances in the external dimension of migration*. Available at: <https://www.2021portugal.eu/en/news/portuguese-presidency-highlights-advances-in-the-external-dimension-of-migration/> (Accessed: 18 June 2021).

of migration management,<sup>20</sup> and it seems unlikely that any significant progress will be achieved under the incoming Slovenian Presidency, which is among the migration hardliners.<sup>21</sup>

## What is next?

Given the politically sensitive nature of the RAMM file, MSs in the Council might take a long time to agree on a common position. Inter-institutional negotiations, in turn, might be significantly delayed. If the incoming Slovenian Presidency fails to mediate a shared line, hopes are that France will succeed in this endeavour when it takes up its Council Presidency in the first half of 2022. In the meantime, the EP is also expected to agree on a position which will inform its negotiations with the Council later this year.

Reaching an agreement on a fair and balanced system of solidarity and responsibility sharing is essential in order to bring relief to asylum seekers and migrants who would otherwise find themselves stranded in Greek, Italian, and Spanish islands. However, it is unclear if the flexible solidarity instruments of the RAMM proposal would be sufficient to counterbalance the mandatory responsibility measures of other files in the Pact. To ensure that the RAMM will bring an added value to the EU's asylum system, it is essential that the EP offset the Council's traditionally restrictive tendencies in negotiations on this and related files of the Pact.

<sup>20</sup> Portuguese Council Presidency (2021). *Portuguese Presidency highlights advances in the external dimension of migration*. Available at: <https://www.2021portugal.eu/en/news/portuguese-presidency-highlights-advances-in-the-external-dimension-of-migration/> (Accessed: 18 June 2021).

<sup>21</sup> EURACTIV & AFP (2020). "Slovenia PM backs Hungary, Poland in EU rule of law row." Available at: <https://www.euractiv.com/section/all/news/slovenia-pm-backs-hungary-poland-in-eu-rule-of-law-row/> (Accessed: 18 June 2021).