EDITOR'S CHOICE OF THE MONTH

Refugee Protection as a Public Good: Analysing Responsibility-Sharing and Collective Action within the European Union

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Introduction

Migration has long been one of the most politically charged and institutionally complex issues within the European Union. Asylum governance, in particular, has exposed structural imbalances in the way responsibilities are distributed among member states. These disparities became especially visible during the 2015 refugee crisis triggered by the Syrian civil war, and again following the 2022 displacement of Ukrainians. Under the existing legal framework, more precisely under the Dublin III Regulation, frontline countries have endured an unequal burden in processing asylum applications, while other member states have responded unevenly or remained largely disengaged. This persistent asymmetry has led to institutional strain, deepened political divisions and fragmentation, and prolonged policy stagnation, increasing tensions among the countries of the EU (Thielemann 2020, 166, 175; Monheim-Helstroffer 2010, 86).

The introduction of the New Pact on Migration and Asylum by the European Commission, in 2020, seeks to address these challenges through a more structured, solidarity-based system for migration management. The Pact attempts to reconcile national sovereignty with collective responsibility, proposing new legal instruments, revised coordination mechanisms, and a flexible solidarity model to ensure a more equitable distribution of duties and resources (European Commission n.d.a). However, the success of these reforms depends on their feasibility, enforceability, and acceptance by member states with varying political and economic interests. The analysis

critically examines the extent to which the Pact can fulfil these goals or whether it risks entrenching existing systemic problems.

Theoretical Framework

According to public goods theory, refugee protection can be regarded as a European public good. It is defined by the two fundamental characteristics of public goods: non-excludability, since benefits such as regional security and stability extend to all member states, and non-rivalry, as the provision of protection by one state does not prevent others from adopting similar measures or making comparable contributions (Reiss 2021). In this sense, refugee protection should not be understood merely as a national responsibility, but rather as a European public good that requires transnational cooperation (Lutz, Caballero-Vélez 2024, 3).

Nevertheless, in the absence of mandatory mechanisms, free-rider behaviour emerges. According to this logic, some states benefit indirectly from security without contributing significantly, thereby shifting the burden onto frontline states. In the absence of clear incentives or constraints, member states are likely to act in their self-interest, opting for actions with minimal costs (Betts 2003; Betts 2003 apud Brumat et al. 2023, 91). This reflects the logic of collective action. In large groups, such as the European Union, collaboration is challenging without concrete incentives or robust institutional constraints, and collective cooperation fails, resulting in the under-provision of the public good (Olson 1965 apud Desmarais Tremblay 2014, 18; Hardin & Cullity 2020; Ver Eecke 1999, 151-52). This dynamic generates institutional fragmentation, exacerbates mutual distrust among states, and perpetuates the risk of unequal solidarity, reciprocal support and cooperation being significantly diminished.

In its attempt to provide this public good, the EU has implemented several mechanisms, including state intervention through common norms, proposals for legal harmonization, and budgetary allocations (Chin 2021; Anomaly 2015, 123); market-based mechanisms, through financial contributions or partnerships such as AMIF (Baumgartner & Wagner 2018, 8);

and, more recently, the "flexible solidarity" principle proposed within the 2020 Pact, which allows member states to choose how they prefer to contribute to asylum system management (European Commission n.d.a). Although this flexibility may mitigate political opposition, it does not guarantee an equitable system and risks normalizing a form of symbolic and voluntary solidarity. Accordingly, the optimal provision of the public good depends on the equitable engagement of states and the existence of coercive mechanisms or clear incentives. For refugees, protection is optimal only when the system ensures equal access to resources and services, guarantees rights, and establishes legal standardization across states. In contrast, at the European level, protection is optimal when costs are proportionally distributed and when there is no risk that certain actors bear the entire burden of the system on their own.

In addition to public goods theory, the research also explores the alternative of polycentric governance, which proposes a model of decentralized and adaptive cooperation based on multiple networks of authority, ranging from European institutions and national governments to local authorities and civil society organizations. The polycentric perspective offers a middle way between current fragmentation and full centralization, promoting the distribution of responsibility through broad participation and flexible yet effective mechanisms. In this context, multiple decision-making centres are established without a single authority managing all tasks or making universal decisions (V. Ostrom, Tiebout & Warren 1961, 831-32 apud E. Ostrom 2010, 643; Stephan, Marshall et al. 2019, 7-8).

Methodology

The general objective of this analysis is to assess the extent to which the New Pact on Migration and Asylum can enhance fairness and solidarity in the EU's asylum governance, through the lens of the public goods theory.

To begin with, the context of European asylum governance is analysed through the lens of public goods theory, conceptualizing refugee protection as a public good characterized by two fundamental features: non-

excludability and non-rivalry. This framing allows for the identification of how free-rider behaviours undermine solidarity and the effectiveness of common policies (Betts 2003). Another objective is to highlight the structural vulnerabilities of the current European system, with particular emphasis on the dysfunctions generated by the Dublin III Regulation and how these have placed a disproportionate burden on states located at the EU's external borders. In this regard, the reasons why European asylum solidarity has often been limited and contested can be explained. Additionally, institutional innovations proposed under the new Pact are examined, with a focus on legal reforms, solidarity mechanisms, and crisis management instruments.

A key aspect of the research is the assessment of the Pact's long-term potential to establish a more resilient and sustainable framework for the distribution of responsibilities, aimed at reducing tensions among states and providing more effective protection for refugees. This dimension is complemented by the formulation of public policy recommendations targeting legislative harmonization, the strengthening of financial solidarity, and the enhancement of operational cooperation, in alignment with the fundamental values of the European Union (Carrera et al. 2021 apud Brumat et al. 2023, 98-99).

To address this, the following main research question guides the study: *To what extent can the New Pact on Migration and Asylum promote fair responsibility-sharing in the EU asylum system, based on the theory of public goods?* In other words, the research is grounded in the following hypothesis: *"If refugee protection is framed as a public good, then the New Pact's institutional innovations can enhance cooperation and reduce free-riding behaviour of member states".* In order to analyse this, the study adopts a mixed-methods research strategy, combining qualitative policy and legal analysis, with quantitative evaluation of refugee-related data.

The qualitative methodology involves content analysis of fundamental EU legal texts, such as the Dublin III Regulation, the Asylum and Migration Management Regulation, and communications from the European Commission, as well as reports from the UNHCR and NGOs. This method is

appropriate for understanding the normative and legal underpinnings of migration policy and for examining the evolution of institutional responses to responsibility-sharing. Further on, the study is completed by the quantitative dimension, which includes statistical assessment of refugee distribution data, financial allocations under the Asylum, Migration and Integration Fund (AMIF), and intra-EU relocation patterns from the post-2015 period.

These instruments are complemented by a comparative institutional analysis between two distinct governance regimes: the pre-2020 cost-sharing model in contrast to the innovations introduced by the New Pact on Migration and Asylum. As a result, legal, economic, and operational differences between the two systems are identified, further on assessing their capacities to address collective action failures in EU migration governance.

Comparative Institutional Analysis of the Current Asylum System and the New Pact on Migration and Asylum

The comparative analysis between the current asylum governance system in the European Union, structured around the Dublin III Regulation, and the innovations proposed under the New Pact on Migration and Asylum highlights both institutional developments and persistent structural limitations.

The current normative framework of the European Union regarding asylum is primarily managed through the Dublin III Regulation (Regulation No. 604/2013), which establishes the criteria and mechanisms for determining the member state responsible for examining an international protection application. It is based on the principle that the first state in which an asylum seeker enters is responsible for processing their application. Although initially designed as an instrument to prevent multiple asylum claims, in practice Dublin III has generated significant structural imbalances (Hatton 2016, 10-11). Frontline states, such as Greece, Italy, and Spain, have disproportionately experienced administrative and logistical pressures,

being forced to handle a considerably higher volume of applications compared to northern and western European states (ECRE 2020). This situation became particularly severe during the 2015 refugee crisis, triggered by the conflict in Syria, when millions of people arrived in Europe, straining national asylum infrastructures and the reception capacities of the affected countries.

Rather than providing a mechanism for the equitable sharing of responsibilities, Dublin III has exacerbated divisions among member states. Several countries in central and northern Europe have adopted selective or restrictive policies, while states such as Hungary and Poland have almost entirely refused to participate in the relocation schemes adopted at the European level. Moreover, the complex transfer procedures and often unrealistic deadlines established by the regulation have led to administrative and legal blockages, with many transfer requests failing to be effectively implemented (ECRE 2020).

At the political level, the system has exacerbated profound divisions within the Union, straining relations among member states and calling into question the principle of solidarity promoted in Article 80 of the Treaty on the Functioning of the European Union (Brumat et al. 2023, 97-98). Beyond institutional aspects, the consequences for asylum seekers have been several and often irreversible. The situation in camps on the Greek islands, such as Moria, has become emblematic of the failure of the current system, highlighting the European Union's inability to translate the principles of solidarity and shared responsibility into effective practice. Among the consequences arising from this situation are the following: overcrowding in reception centres, precarious living conditions, violations of fundamental human rights, and the absence of uniform procedural guarantees across the Union (IRC 2020).

Finalised in 2020 and set to be implemented across all member states in 2026, the New Pact on Migration and Asylum represents the European Commission's attempt to establish a more balanced framework for the governance of asylum and migratory flows. In contrast to the unilateral logic

of the Dublin III Regulation, the Pact seeks to institute a flexible mechanism that combines national responsibility with collective solidarity. Some of the most relevant innovations include: the introduction of the flexible solidarity mechanism, the Crisis and Force Majeure Regulation and its associated monitoring mechanisms, legislative harmonization, and a stronger emphasis on external cooperation (European Commission n.d.a; European Commission n.d.b). All of these measures are intended to prevent the recurrence of the challenges encountered in 2015 and 2022.

Firstly, through the flexible solidarity mechanism, member states are not uniformly required to admit asylum seekers, but may instead contribute in different ways, such as relocation, financial support, operational assistance, or infrastructural aid. This approach aims to overcome resistance from certain states to mandatory relocation schemes while preserving the principle of solidarity (European Commission 2024).

Secondly, the Crisis and Force Majeure Regulation and its complementary monitoring mechanisms are designed to ensure a rapid and coordinated response in the case of massive migratory flows. By introducing emergency plans and clear rules for cost-sharing, the Pact seeks to transform ad hoc governance into a more predictable and institutionalized process. Furthermore, legislative harmonization through the new Asylum and Migration Management Regulation, which is intended to replace the Dublin III Regulation, aims to standardize registration, assessment, and return procedures, thereby reducing legal fragmentation (European Commission n.d.a). Finally, the New Pact places strong emphasis on cooperation with third countries through partnerships and readmission agreements, reflecting the European Union's attempt to address both the consequences and the root causes of migration (European Commission 2024).

In contrast, the New Pact introduces a reinforced framework that promotes flexibility, avoiding both the rigidity of the Dublin III Regulation and the political blockages generated by vetoes. Whereas the post-2020 system relied on the logic of unilateral obligation, the Pact seeks to establish the

logic of shared responsibility, even if this is expressed through differentiated contributions. At the same time, the New Pact adds an anticipatory dimension through crisis and monitoring mechanisms, in contrast to Dublin III, which was limited to general and incomplete rules.

Nevertheless, when examined through the lens of public goods theory, significant limitations of the New Pact can be identified. From this perspective, refugee protection may be understood as a non-excludable and non-rival public good, meaning that no state can be excluded from the benefits of collective stability and that one state's use of this good does not diminish access for others. The problem, however, is that such a public good is inherently prone to the "free-riding behaviour" whereby some states benefit from common goods without contributing proportionally to their provision. The Dublin III Regulation fostered precisely this type of behaviour, and although the New Pact introduces institutional innovations, it does not guarantee the overcoming of this underlying logic.

According to the specialized literature, European governance in the field of asylum and migration continues to be shaped predominantly by intergovernmental and transgovernmental negotiations. These often take place under the leadership of supranational institutions such as the European Commission. Therefore, governance in this domain is characterized more by political bargaining among member states than by symmetrical and inclusive networks (Rhodes 1997; Kohler-Koch & Rittberger 2006 apud Börzel 2007, 5). For this reason, structural problems cannot be resolved solely through the redefinition of institutional arrangements. The absence of binding commitments and of clear norms for responsibility-sharing remains a fundamental challenge. While the Pact introduces updated monitoring mechanisms and crisis protocols, it does not eliminate the possibility that some states will continue to avoid responsibilities (Stephan, Marshall et al. 2019).

Conclusions and Limitations

Although the New Pact on Migration and Asylum introduces significant reforms, it fails to fully address the structural imbalances, with the inefficiencies of the Common European Asylum System remaining deeply rooted. The analysis only partially confirms the research hypothesis. The Pact introduces instruments that may encourage cooperation and limit free-rider behaviour by conceptualizing refugee protection as a European public good. However, the voluntary nature of certain measures and the absence of binding obligations enable member states to avoid substantial contributions. In this regard, the Pact establishes the premises for strengthening solidarity among EU member states but does not guarantee the elimination of the free-rider logic. Moreover, its effectiveness is constrained by the lack of political will (Teodorescu 2024, 38-41).

Consequently, there is a risk that states will opt for the easier forms of contribution, such as financial support, rather than effective relocation, leaving responsibilities unevenly distributed and managed. As a result, fragmentation may persist and further destabilize the entire system, particularly in the event of large-scale refugee crises. For the Pact to succeed, a shared political will at the national level is fundamental. Nevertheless, member states remain reluctant in this context. Finally, the lack of legislative harmonization at the European Union level constrains the effectiveness of protection, risking the perpetuation of human rights violations both during transit and in destination countries (European Commission 2024).

There are some limitations of the study that can be acknowledged. The analysis is primarily theoretical and policy-based, relying on official EU documents and secondary sources. Primary data, such as interviews with institutional actors, could have deepened the empirical grounding. Moreover, the New Pact on Migration and Asylum is currently a work-in-progress project. Therefore, its legal and political implementation remains incomplete at the time of writing, with member states expected to adopt and operationalise the new measures until mid-2026. As a result, the predictive

capacity is rather limited. At last, the research is primarily centred on the theory of public goods, with the polycentric governance approach serving a complementary, yet secondary, analytical role. Future studies could expand upon this foundation by incorporating additional theoretical perspectives relevant to the governance of shared responsibilities and collective goods.

Therefore, in order for the Pact to implement new and effective measures without reproducing the old models and limitations of the current asylum system, it is essential that refugee protection is understood as a European public good. Moreover, effective cooperation requires not only procedural, but structural reforms, through coherent legal harmonization, genuine solidarity among member states, strong monitoring and sanctioning mechanisms, and well-coordinated collective governance. At the same time, clear and equitable relocation obligations should be established, moving beyond voluntary schemes, and effective legal instruments should be made available at all stages of the procedures. Additionally, the externalization of responsibilities should be discouraged through the strengthening of internal responses, in order to prevent violations of the principle of non-refoulement and to avoid exposing refugees to significant risks. The active involvement of local actors in the processes of protection and integration should also be encouraged. Effective governance ought to be rights-based, equitable, and grounded in genuine responsibility-sharing, rather than focused predominantly on control and the excessive securitization of borders (Teodorescu 2024, 38-41).

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