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11 Consolidating the fortress Europe: Conceptualizations of solidarity in the EU Asylum System governance post-2015

Abstract: Over the last decade, the construction of a crisis narrative has continued consolidating the idea of a "fortress Europe" at the expense of access and the right to asylum in the EU. In this chapter, we embark on an analysis of how a series of crises and their management has been affecting EU asylum policies, and more specifically how the discursive construction of solidarity, a cornerstone of the Treaty on the Functioning of the EU and a core value of international asylum law, has been evolving within these policies. Our analysis demonstrates how the governance of asylum in the EU has shifted towards more restriction and less solidarity both with refugees and amongst Member States in the context of emergency management. We focus on the shifting perspectives on solidarity between 2015 and 2022 and trace how the concept of solidarity continues to evolve in the European governance of asylum. The analysis culminates in a discussion of the Temporary Protection Directive, the recent activation of which has once more shed light on different EU actors' and member states' answers to the question of who deserves solidarity in the EU and for how long, illuminating important aspects of racial discrimination and temporariness.

Keywords: Asylum, solidarity, refugee crisis, CEAS, fortress Europe

Introduction

Contemporary international asylum law was born in the aftermath of the Second World War and has thus moulded into crisis management. In the EU context, asylum policy has been developing through a series of crises or perceived crises and emergencies. In this chapter, we embark on an analysis of how this series of crises and their management has been affecting EU asylum policies in recent years, and more specifically how the discursive construction of solidarity, a cornerstone of the Treaty on the Functioning of the EU and a core value of international asylum law, has been evolving within these policies. We contribute to this volume by offering a better understanding of the relationship and patterns of action between crises and EU policy responses in the area of asylum, with a specific focus on solidarity.

Refugee protection as part of the international human rights regime has always been connected to shifts in global politics, as well as solidarity towards people fleeing persecution and responsibility-sharing between states. In 2015, when more than a million refugees, mostly Syrian, crossed the European borders, the perceived crisis in the EU was so extreme that President of the European Commission Jean-Claude Juncker stated it "shook ... [the] very foundation of the European integration project" (Lavenex 2018). The image of Ukrainian refugees crossing the European Union (EU) borders under the Temporary Protection Directive[1] (Council Directive, 2001) in 2022 can be interpreted as a further paradigm shift in European asylum policy (Carrera et al. 2022; Rasche 2022). EU governance in the area took a significant turn from the closure of internal borders and the humanitarian emergency in Greece and Italy in 2015 to the Temporary Protection Directive (Council Directive 2001) in 2022, under which refugees from the Russian invasion of Ukraine have been freely crossing EU borders.

In this chapter, we conduct a framing analysis of the main policy documents of the EU in the area of asylum policy, to demonstrate how perceptions of solidarity in the EU have shifted under the guise of "emergency". Part of our inquiry concerns the recent events in Ukraine and the activation of the Temporary Protection Directive (Council Directive 2001). We see these policy developments connected to the securitization of migration (Huysmans 2006), which is historically and deeply embedded in the idea of "fortress Europe" (Geddes 2008; Levy 2010): a fortress which is keeping the external EU borders sealed in order to facilitate the internal freedom of movement (Geddes 2008; Levy 2010; Tsianos & Karakayali 2010). The idea of a fortressed Europe is inherently contradictive considering the EU's aim of reuniting the European nations after the Second World War. As Engelbert et al. (2019) stated this is due to two ideas: that freedom in Europe is inherently vulnerable and therefore it should be treated as a security matter, and that some people and their access to freedom are particularly risk-prone.

"Crises" and the Common European Asylum System

The large-scale movement of refugees fleeing from conflicts as a result of the dissolution of the former Yugoslavia put the issue of creating common European pol-

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1 The Temporary protection is an exceptional measure to provide immediate and temporary protection in the event of a mass influx or imminent mass influx of displaced persons from non-EU countries who are unable to return to their country of origin.

icies for the management of asylum in this and potential similar crises on the EU table (Moreno-Lax 2017). Consequently, the increased numbers of asylum seekers crossing the EU Member States' borders and applying for international protection triggered the creation of a Common European Asylum System. The problem which was labelled 'asylum shopping'[2] induced the idea of an EU-wide asylum system that would include a mechanism of allocating responsibility among Member States for each asylum application in a way that would promote what has since then been called 'burden sharing'.

The creation of a regional refugee protection system within the EU in the 1990s is not self-evident (Guild 2006). The direct connection of the Area of Freedom, Security and Justice to migration policies indicates that the main objective driving the creation of a European asylum regime was first and foremost the effective regulation of border management (Chetail 2016; Guild 2016). Therefore, a more careful reading of the evolution of the European asylum regime, as well as the discourse surrounding asylum such as 'asylum shopping', 'burden sharing', 'migrant and refugee flows' and 'migration/asylum crisis''', point to a clear connection between internal security and border control emergency management , in addition to anticipated crises.

More recently, the framing of the increase of refugee arrivals in Europe in 2015 as 'migration' crisis has been contested from within and outside the migration research community. As it has been noted, notions of crisis should reflect on the questions for whom and where crisis conditions would be met. Moreover, the crisis should be discussed as regards the root causes of the displacement, in this case: notably the Syrian civil war (Jeandesboz & Pallister-Wilkins 2016). Researchers studying the 2015 events and their consequences for and within the EU have considered it as a crisis of governance (Börzel 2016; Sahin-Mencutek et al. 2022) with severe humanitarian implications at the external borders (Afouxenidis et al. 2017). Rather than considering the high number of asylum seekers as a crisis in itself, Chamberlain (2020) argues that the member state governments' actions generated the crisis, turning it into a moral crisis shaped by Europe's failure to take responsibility for what took place at its external borders. Moreover, the crisis narrative was certainly influenced by unprecedented numbers of migrant deaths at sea (McMahon & Sigona 2021). Overall, there is consensus amongst researchers that the 2015 events and their aftermath constituted a crisis of political solidarity (Crawley 2016). Although the framing of a crisis is generally seen as an opportunity

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2 The term "asylum-shopping" is not a formal legal term but it is used in different EU documents and communications and it has a rather negative connotation. It implies an abuse of the asylum procedure through the lodging of more than one application for international protection in different EU Member States.

for policy development (Baumgartner & Jones 2002: 293; Geddes 2018), some argue that the predominant reading of the situation in 2015 as a humanitarian emergency did not fundamentally alter the principle tenets of EU policy (Guiraudon 2018; Servent 2020).

EU institutional responses to the "migration crisis"

In order to understand how European asylum governance was, and is, affected by crises, and the way it is somewhat crisis-producing, it is important to understand the responses from key EU institutions to instances of strain and (perceived) emergency. Following the 2015 'crisis', the EU was strongly criticized for not being able to provide adequate access to asylum for people fleeing persecution and for not properly addressing the unequal distribution of asylum applications between the Member States (Thielemann 2018). In the context of the emerging crisis, the Commission sought to reform the CEAS whilst simultaneously lacking the time to properly evaluate already existing asylum legislation or to monitor the impact of new legislative proposals. It has therefore been argued that the crisis was to some extent exacerbated by the lack of strong enforcement, weak monitoring, and low harmonisation of EU law (Cornelisse & Reneman 2020). At the same time, and partly as a result, political leaders of various member states shifted towards more nationalistic approaches in migration governance, rather than towards calls for more solidarity, responsibility sharing, or Europeanisation, leading to more restrictive and illiberal migration policies across the EU.

Since an extension of its competences through the Treaties of Amsterdam and, notably, of Lisbon, the European Commission has assumed an increasingly influential role in the traditionally intergovernmental area of asylum governance. Especially during the last decade, the EC has taken on a more political, value-based role in its pursuit of building a system that normalizes migration in a long-term perspective, and that is fully grounded in European values (Fassi & Lucarelli 2021). The so-called "migration crisis" of 2015 led to a renewed struggle for competence between the EC and the Member States: as high pressure was placed on national asylum systems, member states' perception of urgently required action clashed with the EC's more long-term political agenda. This struggle contributed to an increasing politicization of the Commission's role in EU asylum governance. This shift towards a more political role can be explained by the EC's desire to retain agency in a political area where Member States show growing resistance towards European integration and where the policies are increasingly framed as

an emergency or a crisis (Cornelisse & Reneman 2020). Collectively, the Commission's increasingly politicized role in asylum governance, the crisis narrative dominating policy responses, and the Commission's effort to retain authority in its policies resulted in measures primarily focused on efficiency and effectiveness (Cornelisse & Reneman 2020), as well as on enhanced border controls and policies seeking to deter irregular migrants.

Moreover, the larger dynamic of politicization of migration (Entzinger & Scholten 2019), which is directly connected to its construction as a security threat, has set the stage for political debate between Member States in the area. The latter are reluctant to revise a common asylum system which is evidently failing both in allocating responsibility and creating decent conditions for asylum seekers. According to the Dublin Regulation,[3] the country the applicants enter first is the country responsible for the asylum process. The Dublin Regulation has been the cornerstone of the CEAS and also the center of its contestation.

After the increase in refugee arrivals, this contestation intensified. Due to their geography, some member states such as Italy and Greece were forced to take on responsibility for a large part of the asylum seekers who reached the EU's external borders. Other member states with advanced asylum systems and strong economies that were desirable destinations for asylum seekers, such as Germany and Sweden, took responsibility initially by granting the largest numbers of refugee protection. Last, there were member states who strongly refused to share any sort of responsibility, such as Hungary, Slovakia, and Poland. This unequal sharing of responsibility enabled finger-pointing and scapegoating between the member states. Member states started blaming each other for the "crisis", leading to conflicts both internally within the EU and externally with third countries (Crawley 2016).

Thus, it becomes clear that any perception of emergency concerning asylum management in the EU is inseparable from ideas about fair sharing of responsibility. Consequently, the principle of solidarity as a way of sharing the responsibility for refugees within the CEAS is key in understanding the policy developments.

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3 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 stateless person (recast), [2013] OJ L180/31.

Conceptualizing solidarity in the EU

The lack of solidarity in European migration policies is clearly reflected in the protectionism that shaped the CEAS, as well as in the more nationalist agendas and conflicts among the Member States, and also between them and the Commission, during the crisis (Lavenex 2018). Wallaschek (2020) argues: "The solidarity debate underpins the high degree of potential conflict around the migration issue in the EU", and further explains that political solidarity in the area is contested by security-oriented framings of migration. Most scholars agree that solidarity is key to developing a more effective common European asylum system (Thielemann 2018).

More recently, the current events in Ukraine have shown a new side of European solidarity. The swift activation, for the first time since it was adopted, of the Temporary Protection Directive (Council Directive 2001) in 2022, and the unanimity among Member States in receiving Ukrainian refugees in a way that is bypassing the Dublin Regulation raises the question of whether there has been a fundamental change with the European asylum regime and its framing of solidarity. Yet, this solidarity has been extended only to a delimited group of recipients, namely to persons from one specific country, fleeing one concrete conflict which is also to an increasing extent perceived as a direct threat to the rest of Europe. This delimitation of solidarity, and its absence vis-à-vis with other groups of forced migrants, calls for a systematic conceptualisation of solidarity, which is necessary to understand European action – or inaction – in response to situations of strain, crisis, and emergency in the area of migration and asylum.

One conceptualization of solidarity separates state-refugee solidarity and interstate solidarity. The former refers to the solidarity shown towards individuals in need of protection, from states who are legally obliged to protect the individual in question. The latter describes the type of solidarity states show towards each other by, for instance, sharing the responsibilities of refugees' allocation. Both dimensions are encouraged by the EU and can be difficult to distinguish. Nevertheless, both dimensions were not sufficiently developed either in the CEAS or in the Member States during the migration crisis (Karageorgiou 2016).

The second conceptualization of solidarity has to do with the fair sharing of responsibility according to Article 80 TFEU, which states:

> *The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.*

The implementation measures for this fair sharing of responsibility have, however, been less evident. Fair sharing of responsibility in terms of solidarity has typically

been emergency-driven and is built on the assumption that in order to deserve solidarity, Member States must first implement other obligations. Following this approach, if the border states, for instance, would have shown greater responsibility, in the sense of managing the situation with their own means, they would not have needed exceptional solidarity from the other member states (Tsourdi 2017). This creates a paradox where solidarity and fair sharing of responsibility cannot exist apart from each other since you need one of them to receive the other; yet once one is achieved, the other would technically no longer be required (Karageorgiou 2019). To this end, it has been argued that if Article 80 TFEU was reformed in a way that obliged the Member States to fair sharing of responsibility in advance of an emergency rather than after, an asymmetrical burden-sharing – as is currently the case – would not exist (Tsourdi 2017).

In practical terms, solidarity has been operationalised through allocation, relocation, and burden-sharing (Mitsilegas 2014). An allocation mechanism is expected to make member states share protection responsibilities. As long as the main allocation mechanism is the Dublin Regulation, allocation in the EU will continue to place heavy burdens on certain Member States instead of strategizing for fair distribution of responsibility (Karageorgiou 2016). Relocation is viewed as a corrective mechanism, and it entails the relocation of asylum seekers from one member state to another with the aim of sharing achieving fair sharing of responsibility. It is focused on the financial and logistical aspects of sharing asylum seekers, which makes it problematic since the responsibility for fair sharing between the member states is not clearly defined. In consequence, relocation is often merely an emergency-driven response after the allocation mechanism has failed and has proven no long-term sustainable solution. Connected to this is the burden-sharing narrative of distributing the financial and administrative effort of receiving and incorporating asylum seekers in equal shares among member states that have frequently been invoked by politicians during the crisis. The problem with burden-sharing is that it takes away the focus from the right to seek asylum and the people fleeing persecution and shifts it to the member states' situation as host/reception counties. The humanitarian perspective is thus easily overlooked when the discourse revolves around burden sharing. After all, what is fair for the member states is not necessarily fair for the affected people seeking asylum (Karageorgiou 2019).

We will be using these different interpretations of the solidarity concept as policy frames to identify the ways in which solidarity has been understood and used in EU policy documents within the above-mentioned contexts of emergency-driven policy responses. This allows us to illustrate how the framing of solidarity has been affected by crises and how the larger area of EU (forced) migration governance has evolved and either developed policies based on a crisis or been part of producing/exacerbating a crisis based on existing or adapted policies.

Framing analysis of the solidarity conceptualization

To trace the evolution of solidarity in the CEAS in recent years, we will conduct a framing analysis of the key documents that the EC has produced since 2015. Framing analyses seek to understand the discursive processes which construct policy problems and to explain how these problem constructions affect the subsequent reactions to the identified problem (Zito 2011). In consideration of the increased politicization of asylum and the complex policy-making processes and competence shifts/claims in the area of EU asylum governance, we are applying the framing analysis approach to untangle the conflicting problem definitions of solidarity and their impact on EU asylum governance.

The level of contestation in the framing of migration and asylum indicates that it is an "intractable problem" (Rein and Schön 1994). Unlike other types of policy conflicts that can in principle be settled by recourse to facts and established rules, Rein and Schön (1994) define this type of policy controversy as conflicts that can only be overcome when participants 'reflect on the frame-conflicts implicit in their controversies and explore the potentials for their resolution'. As described above, asylum policies are interlinked with multiple perspectives on the concept of crisis, as demonstrated in the case of the 2015 events and their aftermath – the crisis dimension of which has been identified as lying first and foremost in the Syrian civil war, in the humanitarian emergency at the EU's borders, or in the governance crisis resulting from the lack of consensus among EU member states. This case exemplifies how conflicting perspectives on what kind of crisis the EU is facing can produce different policy responses.

In the following analysis, we focus on the assignment of institutional responsibility allocation and the ways this allocation changed over time. Following the different conceptualisation approaches of solidarity outlined above, we trace the following policy frames in the analysed documents;
– interstate- and state-refugee solidarity,
– solidarity understood as the fair sharing of responsibility and burden-sharing,
– solidarity in allocation and relocation, and finally
– solidarity as an emergency-driven response.

The material analysed consists of the Commission's Agenda on Migration (2015), the New Pact on Migration and Asylum (2020), and the Temporary Protection Directive (2001, activated 2022), along with accompanying policy documents. The analysis demonstrates how the framing of solidarity has evolved under the impression of two major phases of a (perceived) crisis.

Interstate solidarity and state-refugee solidarity

In the context of the two above-mentioned crises, one major finding emerging from the analysis of Commission documents on asylum governance is a general absence of references to state-refugee solidarity. Among the few exceptions the analysis could trace, solidarity from the EU and Member States towards refugees can be spotted in the Agenda on Migration from 2015. Solidarity is framed as an issue in which more work needs to be done by the Member States to provide a safe haven for those fleeing persecution (COM (2015) 240: 2). The Agenda contains an overall strong humanitarian focus and an emphasis on fundamental human rights (COM(2015) 240). However, even here, the actual word solidarity is never used in this context.

In terms of interstate solidarity, member states are repeatedly urged to show solidarity towards each other to deal with the challenges of migration flows, for instance in funding Frontex (COM(2015) 240: 3), or relocation in which member states "… will need to show solidarity" to assist countries at the EU's external borders (COM(2015) 240: 4). Later on, solidarity is defined as something that needs to be balanced with responsibility; states are obliged to show support towards the most pressured among themselves, whilst emphasising that such solidarity would by no means reduce the responsibility of the border states (COM(2015) 490: 3). In a Commission communication on the Delivery of the Agenda on Migration from 2017, an increased use of interstate solidarity is visible, mostly concerning relocation and responsibility sharing, emphasising a strong moral dimension of the need for member states' ability to trust each other (COM(2017) 558).

In accordance with an increasingly dominant distinction between 'deserving' and 'undeserving' migrants in various European states' asylum policies, state-refugee solidarity can be traced to an effective return system for those who stay in Europe without legal documents. According to this argument, effective returns are the only way for the EU to show solidarity with refugees "in real need of protection." (COM(2017) 558: 20). The argument is based on the notion that the EU would have very limited resources to attend to refugees and therefore returning anyone who has no grounds for seeking international protection would allow the use of these scarce resources for those in 'real' need. This framing is echoing the "fortress Europe" narrative, where protecting the borders from irregular migration is claimed to be related to an efficient asylum policy. This is highly controversial given the fact that refugees have no other regular paths of applying for international protection except by crossing EU borders.

The most distinct disparity in the Pact, compared to the Agenda, is the more operational explanation of how interstate solidarity should be achieved. Instead

of understanding solidarity as fairly shared funding and relocation, the Pact focuses on more common screening systems, a common EU system for returns, and suggested actions for rules determining which Member State is responsible for asylum applications (COM(2020) 609). Solidarity is defined as a concept that implies that all Member States should contribute (COM(2020) 609: 5) and consistently address the issue of migration in solidarity even after the crisis has ended (COM(2020) 609).

Finally, it is difficult to find any evidence of solidarity being framed in the state-refugee perspective in the Pact. It is merely argued that the EU must do more to protect refugees and that assisting those in need is an obligation under international law, a moral duty, and "a key element of the European integrated border management" (COM(2020) 609). However, solidarity is never mentioned, only the requirement of Member States to assist one another.

The Temporary Protection Directive (Council Directive 2001) is even more grounded than the other documents in the idea of inter-state solidarity. In chapter VI, which bears 'solidarity' in its title, it is clearly stated that "Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity." In the Directive, the rationale of solidarity is for preventing a situation where a few Member States must deal with mass arrivals of refugees and the potential consequences for their respective asylum systems. The framing of state-refugee solidarity is implied through the framing of limited reception capacities which can result in national emergencies. The Directive recognizes that in case there are mass arrivals, the principle of solidarity could be used to balance the reception capacities of states exposed to particularly high numbers of arrivals. This framing, albeit including a humanitarian perspective, is not grounded in the individuals' right to protection or the responsibility of the state to provide it.

The EC proposal for the activation of the Directive (COM (2022) 91) and the Council Implementing Decision (2022), emerging more than twenty years after the Directive following Russia's invasion of Ukraine and the thereby triggered massive migration movement of persons fleeing the conflict, directly discuss the Ukrainian people as those in need of protection. Still, the framing analysis of solidarity points heavily to interstate solidarity. In particular, the Temporary Protection Directive "[..]the provisions under the Temporary Protection Directive promote a balance of efforts between the Member States." (COM (2022) 91). It further elaborates that the facilitation of the implementation of the Directive can be "done through a 'Solidarity Platform' whereby Member States exchange information regarding their reception capacities and the number of persons enjoying temporary protection on their territories." (COM (2022) 91). This is an important finding, as the basis of interstate solidarity relies more on ideas of effective management than the international protection regime which is focused on each individual's right to seek protection from persecution. Interestingly the unusually open response to Ukraini-

an refugees was not primarily driven by altruistic motives but first and foremost by the motive of preventing a system overload.

Fair sharing of responsibility and burden sharing

As indicated above, we can see that the framing of solidarity is increasingly connected to the framing of responsibility (Tsourdi 2017). This has blurred the lines between fair sharing of responsibility and burden sharing (Karageorgiou 2019). The Agenda emphasizes the need for Member States to act in solidarity and demonstrate the fair sharing of responsibility to address migration, for instance through a permanent system for responsibility-sharing for large numbers of asylum seekers (COM(2015) 240: 4). Responsibility-sharing is frequently mentioned in the migration crisis, where the Agenda emphasizes the need for both Member States and the EU to take on greater responsibility to help the states on the frontline of migration arrivals (COM(2015) 240: 6). In relation to the crisis, the burden narrative appears, where the failure of the Dublin Regulation is acknowledged as having led certain Member States to stand alone in "difficulties" (COM(2015) 240: 6). In a proposal from the Commission in 2016 for a regulation on the responsibility distribution for incoming asylum seekers among member states, it is stated that particularly strained Member States should be "relieved of some of the burden", and that extreme migration flows would need to be met by all Member States showing responsibility (COM(2016) 270: 5), clearly demonstrating the link between responsibility-sharing and burden-sharing.

This trend continues in the New Pact on Migration and Asylum, in which the Commission seeks to operationalise solidarity by introducing technical aspects of the responsibility-sharing mechanism, such as return sponsorships and rules for return responsibility (COM(2020) 609). Under the new solidarity mechanism, it is stated that Member States must provide those states facing a particularly high burden with the necessary support to return those who are not allowed to stay and share responsibility if a return is not carried out on time (COM(2020) 609: 5). This suggests that the Member State with the capacity to take responsibility and assist pressured Member States is also the one that must show solidarity.

A Proposal on Asylum and Migration Management from 2020 states that the only time Member States were obliged to show solidarity during the migration crisis was in terms of relocation. It mentions the burdens that the Dublin Regulation has imposed on some Member States in terms of fair sharing of responsibility, and proposes new actions to be taken in order to balance solidarity and burden-sharing more efficiently (COM(2020) 610). However, it also acknowledges a lack of political willingness to revise the Dublin Regulation, since it still states that the re-

sponsibility criterion related to first entry will remain in place (COM(2020) 610: 12). Furthermore, it reflects the general tendency in EU asylum governance to deal with short-term solutions to a crisis rather than considering long-term consequences. This is partially explained by the political contestation around asylum and migration. And it also indicates the EU's inability to cope with the migration crises compared to other policy areas where the union recently succeeded in adapting and sometimes developing new policies in response to crises (Riddervold et al. 2021).

The activation of the Temporary Protection Directive directly challenges the logic behind the Dublin Regulation, since it does not foresee a rule of seeking protection at the Member State of first entry. On the contrary, the EC proposal for the activation of the Directive (COM(2022) 91) states that Ukrainians can travel through the EU without a visa. This is framed under a logic of burden-sharing which is very different from the Dublin Regulation, and it shows that under different types of emergencies and political alignments highly politicised policies such as the Dublin Regulation can be challenged (in this case, of course, only as a temporary measure, although it should be kept in mind that many temporary solutions have gradually become a permanent rule in the EU's history, notably when adopted in response to a crisis). In the case of the Directive, the emergency at hand was viewed as a result of a conflict in Europe and thus requiring the involvement of European actors such as the EU. Consequently, there is less resistance to framing a European solution that diverges from the previously established principles of the CEAS.

Allocation and relocation

The Agenda on Migration puts a notable focus on the establishment of EU relocation mechanisms. It presents a relocation scheme with a focus on shared responsibility and a proposal for a permanent common relocation system for emergency situations (COM(2015) 240: 6), clearly suggesting that a well-functioning relocation system may constitute a solution for future emergencies. The most outstanding finding from the perspective of this framing analysis is that relocation is repeatedly framed in the Agenda as a solution to the migration crisis, but never explicitly as a strategy to achieve more solidarity – neither vis-à-vis forced migrants nor at the interstate level.

This framing, however, is not dominant in Commission documents of that time – to the contrary: in a Commission communication on "immediate operational, budgetary and legal measures under the European Agenda on Migration" from the same year, relocation is framed as proof of solidarity between Member States (COM(2015) 490), suggesting that the two concepts are considered as interconnect-

ed. This can further be corroborated in later documents where the relocation and protection of refugees is framed as a way for Member States to show solidarity towards affected member states (COM(2016) 165), and as a sign that (interstate) solidarity can work in practise (COM(2017) 558).

Interestingly, relocation and allocation are framed as acts, or in a context, of solidarity when immediate crisis (re-)action is discussed, rather than in proposals for general, more long-term relocation strategies. Moreover, discussions around relocation repeatedly refer to the failure of certain member states to contribute. Namely, members such as Hungary and Slovakia are singled out as having failed to implement the relocation plans (COM(2016) 165). Some states are named as not having relocated a single person, and the Commission urges all Member States to show (intrastate) solidarity by taking over relocations to answer the need for help in Greece and Italy (COM(2017) 405: 10).

In reports from 2018 and 2019, the relocation measures that were implemented during the crisis are equally presented as proof of intrastate solidarity. A similar framing strategy can be traced in the New Pact which presents a new solidarity mechanism with a primary focus on relocation or return sponsorship[4] (COM(2020) 609: 5). Although these long-term relocation measures seem contradictory to the approach of relocation as crisis management, they can be explained in the light of the strong contestation regarding the allocation mechanism of Dublin Regulation. In other words, as the EC acknowledges that the Dublin Regulation will not be revised any time soon, relocation becomes a solution for "enforcing" solidarity.

Up until the activation of the Temporary Protection Directive, allocation and relocation as solidarity framings have never included the notion of refugee agency. On the contrary, refugees' agency in the form of secondary movements, i.e. moving to another Member State to apply for asylum instead of applying in the Member State of first entry, according to Dublin Regulation, are considered by the EU and the Member States as a security threat and a threat to the CEAS. In the EC proposal for the activation of the Directive, the possibility of Ukrainian refugees moving under the temporarily introduce visa-free regime and choosing for themselves where to apply for asylum is viewed as a facilitator for the asylum systems of the Member States (COM(2022) 91: 11). This is a very interesting framing, as it points to what is possible within a common European asylum regime. Crisis management concerning asylum policies often portrays refugees as a risk in the sense that high numbers of arrivals can destabilise asylum systems, or that the irregular and uncontrolled movement of asylum seekers can trigger security concerns. In

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4 Under the return sponsorship a member state would undertake the cost of returning

the Directive, however, refugees' agency is not viewed as a risk or a security threat. In contrast, in 2015, refugees from the Middle East and North African countries who due to aspects such as culture and religion were not seen as European, triggered many debates on (intrastate vs. state-refugee) solidarity and security when crossing the EU borders. Therefore, the activation of the Temporary Protection Directive reaffirms the fact that solidarity in the CEAS is not implemented in an equal and non-discriminatory manner (Carrera et al. 2022; Franck et al. 2022).

Emergency-driven responses

This final part of the analysis will focus on solidarity framings as a response to emergencies, rather than being an integral part of the EU asylum system. The Agenda on Migration was written as a response to the 2015 'migration crisis', and therefore presents several measures and actions framed as a response to the crisis. It demands more solidarity from the Member States, which should, however, last first and foremost for as long as the extreme migration flows persist (COM(2015) 240: 2). Solidarity is thus framed as a measure to solve a crisis, and a dimension that grows in importance during times of elevated strain and emergencies.

In a later document, emergency is mentioned in the discussions on relocation, where it is stated that Member States should take part in emergency relocation processes in the spirit of solidarity. Member States are furthermore urged to take the emergency situation on the ground into account when deciding on their allocation quota (COM(2016) 165: 13). Interstate solidarity is thus continuously framed as a solution to the emergency facing the EU, and the Commission purposefully uses an emergency framing in this sense in order to attribute high importance and urgency to the suggested solidarity measures. In the years after the immediate crisis context, however, solidarity gradually disappears from the Commission's discourse on emergency measures: whilst still containing proposals on better crisis management, the 2018 and 2019 documents do not contain a similarly clear connection between solidarity and emergency assistance (COM(2018) 250 & COM(2019) 481).

By the time of the New Pact's presentation in 2020, solidarity is framed as a constant concept of EU asylum policy rather than as a mere element of emergency response (COM(2020) 609), indicating that the crisis led the EC to adapt its long-term migration policies. Indeed, the Commission calls for solidarity to become a permanent feature in EU asylum governance, to make the EU constantly prepared for emergencies, and to avoid the need for emergency-driven responses in the future (COM(2020) 609: 3).

Yet, the year 2022 produced a noteworthy reappearance of emergency-driven solidarity. The whole idea behind the Temporary Protection Directive relates to emergency-driven solidarity, as it can only be activated when there is a case of "mass influx of displaced persons who cannot return to their country of origin" (Council Directive 2001: 212). The main novelty in the Commission's proposal for the Directive's activation (COM(2022) 91), compared to previous documents, is that the proposed action seeks to answer a crisis context proactively rather than retroactively, in that it seeks to prevent the consequences of the emergency at hand. Compared to 2015, when EU action was always running behind the escalating humanitarian emergency at its borders, we see here a call to solidarity already prior to a full-blown crisis of reception.

Arguably, this pre-emptive call for solidarity before the asylum systems of the Member States are overwhelmed, creating a reception crisis, could not have been achieved without a clear and uniform political will. Hungary, Slovakia, and Poland, all of which share borders with Ukraine, are member states which usually oppose any measures in the area of asylum policy, notably in the name of both interstate and state-refugee solidarity. The fact that they are located at the frontline of the emergency, however, as well as the notion of Ukrainians as fellow Europeans, seems to have shifted (at least temporarily) their political positioning. This demonstrates that the shared perception of an internal crisis was not sufficient in itself, but had to be combined with a wide political agreement among member states, to produce responses to the emergency which before this point in time did not find the necessary support at the EU level, albeit existing as a theoretical option – after all, the Temporary Protection Directive lay ready to be applied in European drawers ever since its adoption in 2001. Many scholars expressed their surprise in 2015 when the Temporary Protection Directive was not activated (Genç & Şirin Öner 2019; Ineli-Ciger 2016). One explanation which we see by looking at the framings of solidarity in 2015, is that there was strong resistance from certain member states to accept that the increase of Syrian refugees would constitute a European emergency, requiring a European solution in a spirit of solidarity. Notably, these same countries which rejected responsibility-sharing under the principle of solidarity then are the ones who are sharing borders with Ukraine.

Discussion and conclusion

Our goal in this chapter was to explore how two crises and their management have been affecting European asylum policies under the influence of different and evolving discursive constructions of solidarity. Compared to other EU policy areas, asylum policy has largely evolved around crises. Indeed, it might be consid-

ered synonymous with crisis management. Despite the Commission's efforts in the New Pact on Migration and Asylum in 2020 to have a more sustainable approach to solidarity in the area, the documents leading to the activation of the Temporary Protection Directive imply that developments in asylum policy continue to take place in the EU context as part of crisis management.

By looking more specifically at the shifting perceptions of solidarity in the EU and the name of the "emergency" since 2015, and more recently with the activation of the Temporary Protection Directive, our analysis has shown that solidarity is key in understanding the relationship between crisis and asylum policies. In particular, we see that solidarity under the impression or imminent threat of an emergency has been used in ways that consolidate the "fortress Europe" (Geddes 2008; Levy 2010), as it is used first and foremost in the sense of interstate rather than state-refugee solidarity, and with a focus first and foremost on member states rather than third countries. Indeed, in all the documents we have analysed, solidarity has been framed predominantly as a matter of interstate relations. The interstate framing of solidarity has multiple consequences. First, it renders the refugees invisible, who are conceived as a burden that needs to be shared, rather than as persons in need of protection, calling on states to act on – legal as well as moral – demands of (shared) responsibility. Second, the interstate framing creates a context in which Member States negotiate – and often enough disagree, as the post-2015 phase of EU asylum governance has shown – on how to share the "burden" of refugees without consideration of the principles of international law, human rights and, more specifically, the right to seek asylum. These negotiations disclose a notable degree of tension in differing perceptions of interstate solidarity, both between the Commission and member states and among member states themselves (Karageorgiou 2016). Namely, the Commission strives to claim authority and agency in the area of asylum governance by framing such solidarity as a collective responsibility. In the context of the 2015 crisis, a number of member states, however – most notably Slovakia, Poland, and Hungary – argued conversely that problems arising from a lack of EU-level interstate solidarity would not be affecting them, and that a common approach of shared solidary action would hence not be required from their point of view. Yet, when the number of arrivals at their borders sharply increased in 2022, these states' positioning changed fundamentally, opening the way for the activation of the Temporary Protection Directive.

Finally, the analysis has shown how notably the Commission's framing of solidarity has changed over time to accommodate more restrictive and reluctant member states. Namely, while in 2015 solidarity has been framed as a solution to the increased refugee arrivals, later documents applied a more retroactive and negative frame in the sense that Member States have failed to act in solidarity. In 2020, the New Pact attempted to reframe solidarity once more in a more proac-

tive way and as a long-term solution rather than mere crisis management, in that it introduced a solidarity mechanism of relocation and presents a series of concrete operational proposals for its implementation. The documents surrounding the activation of the Temporary Protection Directive in 2022 have shown, however, that the EU-level framing of migration-related solidarity remains dependent on the respective context and the (perceived) needs for action it produces. Namely, the analysis of these documents demonstrates that solidarity in the area of asylum and migration is a principle that Member States are willing to follow when the crisis and the refugees are seen as intra-European, which stands in stark contrast to member states' reaction to a crisis perceived as external. It is very hard to argue that the situation in 2015 could not have qualified as a "mass influx", according to the terminology of the Temporary Protection Directive. It is also very hard to argue that the protection criteria of the directive are non-discriminatory when asylum seekers and non-Ukrainian people fleeing Russia's war in Ukraine regardless of their legal status have been excluded. Indeed, there is credible evidence that the Temporary Protection Directive was implemented at the external EU borders in a racist and discriminatory way, prohibiting people who looked insufficiently "European" to cross the borders (Franck et al. 2022). Therefore, although the activation of the Temporary Protection Directive provides a ray of hope for real solidarity in the area of asylum in the EU, it also shows that the CEAS is not fortified against racist and generally discriminatory practices which are incompatible with the general idea of solidarity.

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