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## IN ANTICIPATION OF NEW MIGRATION CRISES

### RESILIENCE AND ANTICIPATORY GOVERNANCE IN THE EU'S MIGRATION MANAGEMENT FRAMEWORK

**ABSTRACT**

The concept of resilience has been commonly recognized as a new leitmotif of security governance in the European Union. In the aftermath of the so-called 'migration crisis,' resilience has spilled over migration and border management, promoting the notions of resilient Schengen and broadly understood technologization of border management, to name a few. This trend has been only strengthened during the COVID-19 pandemic and the most recent border and refugee crises on the EU eastern border, which have mainstreamed the notions of anticipation, preparedness, and the ability to withstand shocks and disturbances external to the EU as a whole. Building on these developments, this article discusses how anticipatory governance interlocks with resilience within the newly proposed EU migration crisis management framework. In doing so, it provides a more nuanced picture of the EU's post-2015 and 2016 approach to human mobility, asylum, and border protection. Such a take will also allow us to see how exactly the EU has adapted to new migratory circumstances, while conceptualizing the uncertainties related to increased migratory flows and operationalizing specific anticipatory and resilience-centered policy responses.

**Keywords:** anticipatory governance, early warning, preparedness, resilience, migration crisis, European Union, crisis management

## INTRODUCTION

After the so-called ‘migration crisis’ of 2015 and 2016, the EU has set out to rewrite the playbook on the management of migratory pressures at the European level. The assumption was to learn from the many mistakes made by the EU member states and the EU actors and to develop a framework driven by solidarity, flexibility, and swiftness of rules and procedures. In 2020, the EU has proposed a new take on migration, asylum, and border policy – The New Pact on Migration and Asylum – giving a glimpse into a refreshed management and crisis preparedness framework. With the new approach, the EU has been promoting the notions of anticipation, preparedness and resilience, attempting to embrace not only the changing nature of border and migration management (e.g. militarization of internal security<sup>1</sup> or technologization of border protection<sup>2</sup>), but also possible scenarios that could affect the functionality of the EU as a whole.

In broadly understood risk studies, the notions of anticipation and resilience are not fully in line, as they represent two different ontologies of crisis and perceptions of the future. Anticipation, on the one hand, assumes that with enough early warning the future can be efficiently governed. In this regard, anticipatory practices and technologies are supposed to *explore future directions under multiple drivers of change, and guide sustainability transitions and policies under conditions of complexity and uncertainty*.<sup>3</sup> Resilience, on the other hand, rejects the fact that future can be fully governed and focuses the attention on the development of capacities allowing a particular actor or a system withstand shocks and disturbances caused by abnormal or unanticipated events, and bounce back in their aftermath. However, the EU’s approach to crisis management strongly promotes these two concepts as an innovative and necessary form of governance. This has pointed towards an important research question – how has the EU been attempting to combine anticipation and resilience as dominant modes of migration-related crisis management?

This article aims to investigate how anticipatory governance interlocks with resilience within the newly proposed EU migration crisis management framework. Such a take will allow us to analyze in more depth how exactly the EU has been trying to adapt to new migratory circumstances by looking at specific types of conceptualizations of uncertainties related to increased migratory flows and operationalization of policy responses. The article builds on qualitative content analysis, focusing on the EU crisis management discourse embedded in a series of documents (including proposals

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<sup>1</sup> A. Mazurkiewicz, “The Dynamics of the Contemporary Military Role: In Search of Flexibility”, *Annales Universitatis Mariae Curie-Skłodowska. Sectio K. Politologia*, vol. 25, no. 2 (2018).

<sup>2</sup> J. Jeandesboz, “Smartening Border Security in the European Union: An Associational Inquiry”, *Security Dialogue*, vol. 47, no. 4 (2016).

<sup>3</sup> K. Muiderman et al., “Four Approaches to Anticipatory Climate Governance: Different Conceptions of the Future and Implications for the Present”, *Wiley Interdisciplinary Reviews: Climate Change*, vol. 11, no. 6 (2020), p. 2.

of new legislations, communications, and recommendations of the European Commission) surrounding the New Pact on Migration and Asylum. The analytical framework follows Karlijn Muiderman's et al. classification of anticipatory governance and focuses on the investigation of two key elements of crisis management discourse and practice – *conceptions of the future* and *actions in the present*.<sup>4</sup>

The paper is structured as follows. The first section is devoted to theoretical discussion on resilience and anticipatory governance, revealing their basic characteristics, including points of divergence and convergences. The second section focuses on the analysis of the newly proposed EU approach to migration-related crisis management in relation to a particular type of anticipatory governance (namely *plausible futures, enhanced preparedness, and navigating uncertainty*)<sup>5</sup> and its association with certain elements of resilience. The article ends with conclusions.

## 1. RESILIENCE AND ANTICIPATORY GOVERNANCE

With the rise of uncertainty and complexity in a broadly understood security environment, the concept of resilience has become one of the most influential approaches to studying and governing contemporary security. The conceptual roots of resilience can be traced back to multiple and diverse disciplines such as engineering, ecology, psychology, sociology, management, or political science, to name a few. In general terms, resilience studies focus on individual, group, or systemic capacity to govern unanticipated risks, absorb shocks, function in an adaptive way, and remain capable despite a stressful situation or critical event.<sup>6</sup> In this regard, resilience can be placed in a broader family of risk-centered theories, focused on studying ambiguities, uncertainties, and complexities, which govern contemporary societies and politics.

What makes resilience different from traditional preventive and risk management approach, is the assumption that upcoming shocks and disturbances are not fully manageable, which necessitates the cultivation of *preparedness and the capacity to cope with unanticipated dangers after they have become manifest*.<sup>7</sup> In this vein, resilience pushes security thinking to more pragmatic and realistic logic, which shifts the focus from causal forces of problems and dangers to management and mitigation of their consequences.<sup>8</sup> Individuals, collectivities, and governing institutions have to accept the fact that they cannot control all the events, but they can attempt to prepare for the unknown risks, invest in anticipatory and adaptive capabilities, and learn how

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid., pp. 7-8.

<sup>6</sup> M. Stęпка, "Rezyliencja jako paradygmat bezpieczeństwa w czasach przewlekłych kryzysów", *Przegląd Politologiczny*, vol. 26, no. 2 (2021), pp. 105-106.

<sup>7</sup> A. Wildavsky, *Searching for Safety*, New Brunswick 1988, p. 77.

<sup>8</sup> J. Schmidt, "Intuitively Neoliberal? Towards a Critical Understanding of Resilience Governance", *European Journal of International Relations*, vol. 21, no. 2 (2015), p. 416.

to respond to shocks.<sup>9</sup> As many terms associated with security studies, resilience is a contested concept and there are many interpretations circulating in the academia.<sup>10</sup> For the purpose of this article, I will focus on the engineering and systems approaches, which have proved to be inherently linked with contemporary thinking on crisis management, meaningfully influencing a new ontology of the crisis in the EU migration policy domain.<sup>11</sup> Both approaches are briefly discussed below.

Ecology, being one of the ‘maternal disciplines’ of resilience, has been promoting the so-called engineering or ecological approach, which has become commonly applied in political science, including risk and security studies. The engineering approach focuses on the *magnitude of disturbance that can be absorbed by a specific eco-system while still maintain its functionality*.<sup>12</sup> As C.S. Holling puts it, resilience *determines the persistence of relationships within a system and is a measure of the ability of these systems to absorb changes of state variables, driving variables, and parameters, and still persist*.<sup>13</sup> This specific notion of resilience revolves around the idea that there are multiple equilibria within the system, rather than one single equilibrium that secures its functionality. It focuses on the persistence and stability of the core functions rather than the resistance to any change that can be caused by a disturbance. In more social sciences-centered interpretation of resilience, Filippa Lentzos and Nikolas Rose argue that it is driven by *a systematic, widespread, organizational, structural and personal strengthening of subjective and material arrangements so as to be better able to anticipate and tolerate disturbances in complex worlds without collapse, to withstand shocks, and to rebuild as necessary*.<sup>14</sup> A significant feature of the engineering approach is the element of rebuilding, or *bouncing back* after the crisis, which reflects the ability of the system to restore its original conditions or return to desired state of normality.<sup>15</sup>

As the engineering approach pays attention to rapid changes caused by shocks and disturbances, the systemic approach focuses the attention on ‘in-system resilience’ and on ‘slow changes’ that affect the equilibrium and functionality of specific, often vital, elements of a broader system (e.g., socio-political or ecological).<sup>16</sup> Gradual erosion of sub-systems and their interlinkages can be as catastrophic as sudden crisis. Further, this

<sup>9</sup> M. Stepka, “Rezyliencja...”, pp. 108-109.

<sup>10</sup> For instance: societal, urban, economic, psychological resilience or resilience in complex adaptive systems. See more: P. Martin-Breen, J.M. Anderies, *Resilience: A Literature Review*, New York 2011.

<sup>11</sup> See R. Paul, C. Roos, “Towards a New Ontology of Crisis? Resilience in EU Migration Governance”, *European Security*, vol. 28, no. 4 (2019).

<sup>12</sup> K. Krieger, “Resilience and Risk Studies”, in *Routledge Handbook on Risk Studies*, A. Burgess, A. Alemano, J. Zinn (eds), London–New York 2016, p. 326.

<sup>13</sup> C.S. Holling, “Resilience and Stability of Ecological Systems”, *Annual Review of Ecology and Systematics*, vol. 4 (1973), p. 17.

<sup>14</sup> F. Lentzos, N. Rose, “Governing Insecurity: Contingency Planning, Protection, Resilience”, *Economy and Society*, vol. 38, no. 2 (2009), p. 243.

<sup>15</sup> The element of ‘bouncing back’ to the original state has been criticized for its limiting impact on possible post-crisis transformation.

<sup>16</sup> P. Martin-Breen, J.M. Anderies, *Resilience...*, p. 6.

approach points out that a truly resilient system has to be maintained as a closely connected network of relevant sub-systems which have to be able to withstand shocks on their own and help each other in the event of disturbance. Ultimately, the goal *is to make sure that relationships between smaller scale systems can still function during crisis: that economic systems rebound from smaller market failures; that government can continue to operate during a blackout; that infrastructure can provide necessary services in the wake of disruptive climate events.*<sup>17</sup>

In security studies and public policy literature the concept of resilience has been framed as a form of governance, and in several cases even as an anticipatory form of governance.<sup>18</sup> Even though the literature recognizes the difference between anticipation of risks (management of possible futures) and resilience (preparedness for risks difficult to foresee), they are often presented as two sides of the same governmental coin. As noted by Artur Gruszczak, *preparedness and anticipation are two facets of the preventative form of resilience.*<sup>19</sup> As anticipation in the traditional approach to risk management concentrates on adaptive precaution, in resilience-centered thinking it allows to prepare for their negative consequences. A mixture of anticipatory governance and adaptation is *effective in creating systems that are able to maintain their state in response to the unexpected.*<sup>20</sup> Resilient-centered policies are often intertwined or entangled with several risk-driven logics and may build on anticipation as well as preparedness and robustness.<sup>21</sup> Let us look at anticipatory governance as a possible path to increasing resilience.

Anticipatory governance and the notion of anticipation have a similar pedigree as resilience, as they stem from studies on ecological sustainability, disaster and risk management, and also security and intelligence studies.<sup>22</sup> Similarly to resilience, anticipatory governance is supposed to *handle multiple streams of information and events whose interactions are complex rather than linear.*<sup>23</sup> In this sense, it is a complex system of systems, a specific anticipatory *network of institutions, rules and norms that provides a way to use foresight, networks, and feedback for the purpose of reducing risk and increasing the capacity to respond to events at earlier rather than later stages of development.*<sup>24</sup> It does not change the fact that specific elements of resilience can be found in anticipatory governance, especially when an institution assumes a more holistic approach to crisis management. While anticipation acts as a tool for developing long-term planning and adaptive

<sup>17</sup> Ibid., p. 7.

<sup>18</sup> See for example: E. Boyd et al., "Anticipatory Governance for Social-Ecological Resilience", *Ambio*, vol. 44, no. 1 (2015).

<sup>19</sup> A. Gruszczak, "Resilience and Mitigation in Security Management: Concepts and Concerns", *Forum Scientiae Oeconomia*, vol. 4, no. 1 (2016), p. 12.

<sup>20</sup> P. Martin-Breen, J.M. Anderies, *Resilience...*, p. 48.

<sup>21</sup> M. Stepka, *Identifying Security Logics in the EU Policy Discourse: The 'Migration Crisis' and the EU*, Cham 2022.

<sup>22</sup> A. Gruszczak, *Intelligence Security in the European Union. Building a Strategic Intelligence Community*, London 2016; K. Muiderman et al., "Four Approaches..."

<sup>23</sup> L. Fuerth, "Operationalizing Anticipatory Governance", *Prism*, vol. 2, no. 4 (2011), p. 36.

<sup>24</sup> Ibid.

capacities, resilience focuses on the vulnerability and sustainability of core systems and functions when ‘stuff happens’. In this sense, anticipatory governance includes *managing adversity, covering response, recovery, preparedness and prevention, and implies accepting that not everything can be controlled*.<sup>25</sup>

Muiderman et al. propose conceptualization of four ideal types of anticipatory governance, depending on the aims and specific approaches to the managing of possible futures, namely: 1) probable futures, strategic planning, and risk reduction; 2) plausible futures, enhanced preparedness, and navigating uncertainty; 3) pluralistic futures, societal mobilization and co-creating alternatives; 4) performative futures, critical interrogation, and political implications.<sup>26</sup> Let us focus on the second approach to anticipatory governance, as it intertwines with the notion of resilience in a significant way. The second type of anticipatory governance embraces the notion that there are multiple plausible trajectories of the future and they cannot be narrowed down to a single option. While there is an assumption that the future can be governed, some plausible futures leave governing bodies without control over upcoming events. Here, anticipation helps narrow down possibilities and divert resources (human, material, and financial) to the most vulnerable parts of the system. This approach calls for *enhancing preparedness and building capacities in the present to be able to reflexively navigate diverse (uncertain) futures and steer sociotechnical developments in mitigating potential future harms*.<sup>27</sup> This also requires constant monitoring adaptive capabilities of the system and ready to use mechanisms that can (re)distribute stress generated by a specific disturbance. Let us see how this specific type of anticipatory governance plays out in the newly proposed EU framework for managing migration-related crises.

## 2. EU SCENARIOS FOR MIGRATION MANAGEMENT – BETWEEN ‘GOVERNABLE FUTURE’ AND ‘BREAKING POINT’

Elements of anticipatory governance have been present in the EU migration-security nexus since the beginnings of Schengen cooperation. As often noticed in critical security literature, in an attempt to mitigate the so called ‘security deficit’, which emerged after the liberalization of border checks, the EU has become an apt risk manager, attempting to anticipate and govern migration-related security challenges.<sup>28</sup> In the last three decades, it has developed innovative ways of dataveillance, migration control, and border security, gradually pulling human mobility deeper into the realm of security discourse and practice.<sup>29</sup> In fact, most recent developments in the Area of Freedom, Security and Justice have shown that the EU has been investing in a complex anticipatory

<sup>25</sup> K. Krieger, “Resilience...”, p. 340.

<sup>26</sup> K. Muiderman et al., “Four Approaches...”

<sup>27</sup> Ibid., pp. 7-8.

<sup>28</sup> See R. van Munster, *Securitizing Immigration: Politics of Risk in the EU*, London 2009.

<sup>29</sup> M. Stepka, *Identifying...*, pp. 63-91.

network, driven by ‘pre-emptive techno-securitization’, which is supposed to identify migration-related risks lurking on the horizon and provide high quality surveillance and timely early warnings.<sup>30</sup>

Despite the gradual development of border and migration control technologies, the migration crisis of 2015 and 2016 has left the EU migration, asylum, and border system in shock. It has revealed many weaknesses of the Common European Asylum System, lack of solidarity among the member states, inefficiencies of the EU agencies operating in Area of Freedom, Security and Justice, poor coordination between national and EU border authorities, insufficient funding, to name a few.<sup>31</sup> The crisis has also shown that there are factors beyond the control of the EU migration management technologies and the common approach to migration and border security requires further reforms. In 2020, Ursula von der Leyen has announced a proposal for a new Pact on Migration and Asylum, which includes a refreshed take on the migration crisis management framework governed by anticipation, resilience, coordination, timely reaction, flexible resource allocation, and solidarity.<sup>32</sup> The core of the EU’s anticipatory and resilience-centered crisis management has been mainly embedded in two proposals, *EU Mechanism for Preparedness and Management of Crises Related to Migration* (so called Migration Preparedness and Crisis Blueprint) and *Regulation Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum*. With these proposals, the EU attempts to set out two plausible scenarios for management of migration-related crises, heavily building on the notions of anticipation as well as resilience.

## 2.1 Conceptions of the Future

Let us first focus on conceptions of the future presented in the EU discourse on migration-centered crisis management. As mentioned above, the EU’s approach is based on two scenarios, which to different degrees include elements of both anticipation and resilience. For the purposes of this paper, let us call these scenarios ‘governable future’, centered on monitoring, anticipation, and preparedness and the ‘breaking point’, focused on management in situations of overwhelming crisis and force majeure.<sup>33</sup> As noted in the New Pact on Migration and Asylum, *the EU must be ready to address situations of crisis and force majeure with resilience and flexibility – in the knowledge that different types of crises require varied responses. The effectiveness of the response can be*

<sup>30</sup> L. Marin, “The Deployment of Drone Technology in Border Surveillance: Between Techno-Securitization and Challenges to Privacy and Data Protection”, in *Surveillance, Privacy and Security. Citizens’ Perspectives*, M. Friedewald et al. (eds), London–New York 2017.

<sup>31</sup> S. Wolff, “Managing the Refugee Crisis: A Divided and Restrictive Europe?”, in *Governance and Politics in the Post-Crisis European Union*, R. Coman, A. Crespy, V.A. Schmidt (eds), Cambridge 2020.

<sup>32</sup> *Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU Mechanism for Preparedness and Management of Crises Related to Migration*, C/2020/6469, p. 5.

<sup>33</sup> *Ibid.*, p. 2.

*improved through preparation and foresight. This needs an evidence-based approach, to increase anticipation and help to prepare EU responses to key trends.*<sup>34</sup>

The first scenario revolves around the assumptions that the future is governable. In other words, with enough foresight and resources EU institutions and agencies are supposed to not only predict but also steer perspective disturbance away from the EU and/or allow it to strengthen the resilience of its most vulnerable sectors. One of the key elements of this approach is constant real-time monitoring, early warning, and continued anticipation of increased migratory flows.<sup>35</sup> The blueprint on migration crisis management quite explicitly indicates that the EU cannot be a reactive force anymore and that *a timely and sufficiently comprehensive understanding of events and new trends by all relevant stakeholders should allow to monitor the situation and to be well prepared for a coordinated response when needed.*<sup>36</sup> A complete situational picture is supposed to allow the EU actors to make rapid decisions and implement appropriate measures *as soon as they are needed, in order to prevent the situation from escalating* and build up resilience in case a new migration crisis arises.<sup>37</sup>

The second scenario, the 'breaking point', envisaged in the EU migration crisis management framework is reflected in a situation where the EU must call for an emergency mode in order to maintain the basic functions of its migration, asylum, and border system. In this conceptualization of a 'plausible future', the EU and its member states assume that they *may be faced with abnormal and unforeseeable circumstances outside their control, the consequences of which could not have been avoided in spite of the exercise of all due care.*<sup>38</sup> This crisis situation of force majeure covers exceptional and uncontrollable mass-influx (or a risk of such influx) of national or stateless persons illegally crossing EU external border, being of scale and nature that render EU reception, return, and asylum system non-functional.<sup>39</sup> In such situations, the EU recognizes the inapplicability of its regular legal and policy frameworks and allows for implementation of special procedural rules, derogations of certain types of migration-related legislation, at the same time triggering solidarity clause in order to maintain resilience.<sup>40</sup>

## 2.2 Actions in the Present

As underlined by Muiderman et al., 'actions in the present' reflect broadly understood policy instruments that allow a specific actor to navigate plausible future scenarios and

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<sup>34</sup> *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the New Pact on Migration and Asylum*, COM/2020/609 final, p. 11.

<sup>35</sup> *Commission Recommendation (EU) 2020/1366...*, p. 1.

<sup>36</sup> *Ibid.*, p. 5.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Proposal for a Regulation of the European Parliament and of the Council Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum*, COM(2020) 613 final, p. 20.

<sup>39</sup> *Ibid.*, pp. 13-14.

<sup>40</sup> *Ibid.*, p. 1.



prepare for upcoming shocks and disturbances.<sup>41</sup> The first scenario imagined by the EU strongly focuses on policy instruments that allow foresight, preparedness, and control over migratory movements. In this scenario, the EU crisis response framework is divided into two stages: 1) monitoring and preparedness and 2) crisis management. The first stage is tasked with early warning, preparedness and resilience, while the second focuses on implementation of contingency plans as well as support of rapid, efficient, and coordinated EU operational response.<sup>42</sup>

Firstly, the Migration Preparedness and Crisis Blueprint defines the so called 'Network' – a group of actors that are supposed to *support monitoring and anticipation of migration flows, increase resilience and improve technical coordination of the response to the crisis*.<sup>43</sup> The Network includes the EU member states' border and migration authorities, the Commission,<sup>44</sup> the Council, the European External Actions Service, and a wide spectrum of EU agencies operating within the Area of Freedom, Security and Justice.<sup>45</sup> In this system of sub-systems, each member is supposed to nominate a Point of Contact, tasked with sharing migration situational awareness and exchange of early warning notifications.<sup>46</sup> The Blueprint also points towards potential involvement of relevant third countries of origin, transit and/or destination, which should play a role in developing *adequate situational awareness on migration in those countries and their response to potential crises*.<sup>47</sup>

So far, the EU has not specified how exactly the early warning/forecasting instruments will operate and how the flow of information will be ensured.<sup>48</sup> However, building on the experiences of the 2015 and 2016 migration crisis, the EU has identified two key early warning reports which should contribute to greater awareness and preparedness, namely: Integrated Situational Awareness and Analysis (ISSA), activated by the Council's Integrated Political Crisis Response (IPCR),<sup>49</sup> and Migration Situational

<sup>41</sup> K. Muiderman et al., "Four Approaches...", p. 8.

<sup>42</sup> Tasks under the monitoring and preparedness phase become intensified during crisis management phase.

<sup>43</sup> *Commission Recommendation (EU) 2020/1366...*, p. 2.

<sup>44</sup> In anticipation of a crisis, the Commission is responsible for conveying regular meetings of the Network (at least every quarter). *Ibid.*, p. 6.

<sup>45</sup> The European Union Agency for Asylum (formerly known as European Asylum Support Office), the European Border and Coast Guard Agency (Frontex), the European Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) and the European Union Agency for Fundamental Rights.

<sup>46</sup> *Commission Recommendation (EU) 2020/1366...*, p. 6.

<sup>47</sup> *Ibid.*, p. 3.

<sup>48</sup> The Network is supposed to propose implementation guidelines which will govern the flow of early warning information between relevant actors. For the time being, it will use IPCR information exchange platform and if needed the Commission will be tasked with setting up a dedicated and secured system for early warning purposes. *Ibid.*

<sup>49</sup> Integrated Political Crisis Response is a special crisis management mechanism that can be activated by the Council's Presidency in the event of a complex and cross-sectoral crisis. See more A. Nimark,

Awareness and Analysis (MISAA) released by the Commission.<sup>50</sup> Both reports are driven by a similar methodology, centered on identification of trends and issuing forecasts on migratory flows that will allow alerting all relevant actors and giving them time to implement corrective measures.<sup>51</sup>

Along with anticipatory and forecasting capabilities, the ‘governable future’ scenario is based on the notions of flexibility, preparedness, and increased resilience. To keep the EU migration and asylum management systems in check, the Blueprint proposes setting up an information exchange platform, a resilience-centered monitoring feedback loop between relevant EU and national actors.<sup>52</sup> This so called ‘migration contingency cycle’ is driven by national contingency strategies, which are expected to *ensure sufficient capacity in place for the effective asylum and migration management which shall include information on how Member States are implementing the principles set out in the Regulation*<sup>53</sup> and *legal obligations stemming therefrom at national level*.<sup>54</sup>

The second phase of the ‘governable future’ scenario is concerned with the EU operational crisis management. Here, in line with anticipatory governance, the EU’s framework includes a whole system of corresponding crisis management instruments such the Union Civil Protection Mechanism along with its Emergency Response Co-ordination Centre, the already mentioned Integrated Political Crisis Response mechanism, the European Commission’s rapid alert system – ARGUS, and the Crisis Response Mechanism operating under the European External Action Service.<sup>55</sup> All of these mechanisms can operate simultaneously and before or after activation of the crisis management phase under the Migration Preparedness and Crisis Blueprint.

One of the biggest challenges of this quite complex framework is the coordination between all relevant mechanisms and tools, which are dispersed between different EU institutions and member states. Here, the Network is supposed to be the central hub, where under the guidance of the Commission all crisis management units contribute to situational awareness, analyze options for rapid response, coordinate messages for public communication, and coordinate the support on the ground.<sup>56</sup> Crisis management centers activated in the member states should ensure that the EU’s general crisis mechanisms are included and informed in regards to specific contingency

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“Post-Lisbon Developments in EU Crisis Management: The Integrated Political Crisis Response (IPCR) Arrangements”, in *Ethics and Law for Chemical, Biological, Radiological, Nuclear & Explosive Crises*, D. O’Mathúna, I. de Miguel Beriain (eds), Cham 2019.

<sup>50</sup> These situational awareness reports are supposed to work interchangeably. When activated, ISAA takes over the monitoring of migration situation form MISAA. See *Commission Recommendation (EU) 2020/1366...*, p. 7.

<sup>51</sup> *Ibid.*

<sup>52</sup> That also includes EU agencies, which are supposed to report to the Commission, the European External Actions Service, and relevant third countries.

<sup>53</sup> Regulation on Asylum and Migration Management.

<sup>54</sup> *Commission Recommendation (EU) 2020/1366...*, p. 7.

<sup>55</sup> *Ibid.*, p. 2.

<sup>56</sup> *Ibid.*, p. 9.

measures, situation on the ground, as well as financial and operational needs. In this regard, the EU may activate the so called 'toolbox', which allows for deployment of measures at EU's institutions, agencies, and member state level. The measures mobilized under the toolbox represent a wide array of activities which can be directed to countries of origin/transit or destination (e.g., additional financial resources, deployment of Frontex operations, assistance in crisis management), EU member states at the EU external borders, and other member states struggling under migratory pressures (e.g., advanced border surveillance, deployment of EU agencies such as Frontex, Europol, European Union Agency for Asylum, special financial resources).<sup>57</sup>

As already indicated above, the 'breaking point' scenario focuses on a different type of crisis response, driven by the emergency mode and extraordinary means that are supposed to keep the EU migration system from falling apart. This second scenario imagines that the EU moves the migration crisis management framework beyond normal politics and policy responses and allows for derogation of certain instruments, rules, and timelines, which are normally envisaged in the proposed Regulation on Asylum and Migration Management.

According to the Proposal of a Regulation addressing situations of crisis and force majeure in the field of migration and asylum, the first line of defense in such crises should be the compulsory solidarity, which includes changes in relocation as well as return sponsorship. This specific iteration of the solidarity mechanism incorporates a wider scope of migrant population that falls under the EU relocation scheme. This includes applicants subjected to border procedure, irregular migrants, as well as persons who already received immediate protection.<sup>58</sup> The mode of return sponsorship is also changed and enhanced. This means that, when a person scheduled for return is not deported within four months (instead of eight) of the decision, he or she will be transferred to the member state that is sponsoring the return. Unlike the regular solidarity mechanism proposed under the Regulation on Asylum and Migration Management, this mechanism does not allow substituting relocation and return sponsorship with capacity building activities, operational support, or cooperation with third countries.<sup>59</sup> In this scenario, the EU allows only for these measures that may quickly relieve the EU asylum, migration, and border protection system and help maintain its functionality.

Another set of 'actions in the present' is concerned with the derogation of certain rules and procedures, especially with respect to the timeframes set in the new migration and asylum legislation proposed under the New Pact on Migration and Asylum. This includes, but is not limited to, extensions of a deadline for the screening and registration of asylum applicants; derogation from the standard Asylum Procedures Regulation, resulting in a more extensive application of the border procedure;<sup>60</sup> extension

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<sup>57</sup> Ibid., pp. 10-12.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., p. 14.

<sup>60</sup> According to the European Council on Refugees and Exiles *derogations allow the member states to take decisions on the merits of an application in a border procedure where the applicant is of a nationality with*

of the timeframe for the border procedure for the purposes of return and detention; and the introduction of a special procedure *granting immediate protection status to displaced persons who, in their country of origin, are facing an exceptionally high risk of being subject to indiscriminate violence, in a situation of armed conflict, and who are unable to return to that third country*.<sup>61</sup> These temporary derogations and special procedures are supposed to allow EU member states and agencies to retain or regain control while under extreme pressure and bounce back to the normal operating mode as soon as possible.

## CONCLUSION

The newly proposed EU approach to the management of migration crises has been presented as a comprehensive answer to future challenges related to increased migratory flows, including a possible collapse of the migration and asylum system. It is quite evident how the EU has invested discursively and technologically in early warning capabilities, underlining the importance of anticipation as a forecasting tool, allowing not only the management of 'risky futures' but also the mitigation of unwanted consequences of migration related crises. This mixture of anticipation and resilience manifests itself in two identified and analyzed crisis management scenarios, where the EU has been trying to sketch plausible futures and prepare for different consequences of an increased influx of refugees and broadly understood migrants.

In line with anticipatory governance, the EU has been promoting a system of subsystems, a dispersed but connected network of crisis management policies and tools, which should build a shield around the EU and sustain its basic functions even when the shield is on the verge of breaking. This new attitude represents possibly the biggest shift in the conceptualization of the future migratory flows. In the new proposed legislation, the EU explicitly acknowledges that the member states and EU institutions may be dealing with unanticipated crises and indeed lose control over its migration, asylum, and border management system. This acknowledgment is followed by an institutionalized state of emergency, representing something of the last stand in defense of the functionality of the migration management system.

It does not change the fact that the derogations and exceptional measures proposed under the force majeure regulation deserve criticism of the new crisis management framework. For instance, the European Council on Refugees and Exiles has vocally opposed the widespread introduction of the border procedure and derogations of time

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*an EU-wide first instance recognition rate of 75% or lower (rather than standard 20%), greatly increasing the number of persons subject to a border procedure. Border procedure under the EU law raises a lot of controversies as it requires to register and screen an applicant in border areas, keeping them in a state of de facto detention. European Council of Refugees and Exiles, "Alleviating or Exacerbating Crises? The Regulation on Crisis and Force Majeure", Policy Note, no. 32 (2021), p. 21, at <https://www.ecre.org/wp-content/uploads/2021/03/ECRE-Policy-Note-32-Crisis-February-2021.pdf>, 13 March 2022.*

<sup>61</sup> *Proposal for a Regulation of the European Parliament...*, p. 17.

limits set on registration and screening of asylum applications.<sup>62</sup> Furthermore, the applicability of the new solidarity mechanism, which has been softened compared to its original iteration of the migration crisis of 2015 and 2016, may raise certain objections. The ‘breaking point’ scenario shows that the EU itself sees the shortcomings of the proposed solidarity mechanism, limiting its applicability to relocation and return sponsorship. It also could be argued that the capacity building components proposed under the solidarity scheme may not be applicable in different types of crisis situations – the Russian aggression in Ukraine proving to be one of them.

The unprecedented influx of Ukrainian refugees to the EU (mostly to Poland, Germany, and Czechia)<sup>63</sup> has shown that the EU does not have a scenario for handling this type of crisis. During the first months of the Russian invasion, the European Commission had no dedicated financial resources that could be quickly mobilized to help Ukrainian refugees. Only after adopting the Cohesion’s Action for Refugees in Europe (CARE) regulation, the Commission has managed to redirect EUR 3.7 billion from unused Cohesion Funds (including the European Social Fund and the Fund for European Aid for the Most Deprived) or REACT-EU (pandemic recovery fund) in order to assist EU member states in addressing some of the immediate needs of the Ukrainian refugees.<sup>64</sup> Additional resources have been also released from the Asylum, Migration and Integration Fund. It does not change the fact that most of the operational assistance is dependent on rapidly dwindling resources of the national and local governmental and non-governmental agencies, which often draw on volunteers and private donations in order to secure basic services for the refugees.<sup>65</sup>

Evidently, there is a serious blind spot in the EU’s new approach to migration and asylum, which is more adjusted to migratory movements similar to those of 2015 and 2016<sup>66</sup> than the current influx of Ukrainian refugees. The New Pact on Migration and the subsequent migration crisis management framework are highly securitized and built on the notions of resilience of borders coupled with containment, control, and swift return of unwanted or risky refugees and immigrants. In a sense, it is hostile by design. It does not envisage a crisis management scenario that would introduce a concrete framework that would assist host countries in absorbing, accommodating, and caring for high volumes of refugees. This only shows how the EU requires more inclusive, humanitarian, integration and protection-centered scenario that would include all refugees regardless of their background or country of origin.

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<sup>62</sup> European Council of Refugees and Exiles, “Alleviating or Exacerbating...”

<sup>63</sup> UNHCR, “Ukraine Refugee Situation”, Operational Data Portal, at <https://data.unhcr.org/en/situations/ukraine>, 6 June 2022.

<sup>64</sup> N. Lloyd, F. Gauret, “Where is Europe Finding the Money to Host Millions of Ukrainian Refugees?”, Euronews.next, 20 May 2022, at <https://www.euronews.com/next/2022/05/18/where-is-europe-finding-the-money-to-host-millions-of-ukrainian-refugees>, 6 June 2022.

<sup>65</sup> Z. Wanat, “Polish Cities Feel the Strain of Helping Ukrainian Refugees”, Politico, 2 June 2022, at <https://www.politico.eu/article/poland-cities-strain-help-ukraine-refugees/>, 6 June 2022.

<sup>66</sup> This includes mixed movements, originating predominantly from the Middle Eastern, African and Asian regions.

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