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ASYLUM AND MIGRATION LAW

The Pool and the Pressure: Article 60(3) and the EU Migration Pact's October Test

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In May 2024, the European Union adopted the Pact on Migration and Asylum, a package of ten legislative acts reorganising arrivals, asylum applications, returns and the distribution of responsibility among Member States. Most began to apply on 12 June 2026. One of the Pact's central instruments, Regulation (EU) 2024/1351 on asylum and migration management, commonly referred to as the Asylum and Migration Management Regulation (AMMR), replaces the Dublin III Regulation, which determined which Member State must examine an asylum application and regulated transfers to that State. The AMMR places those responsibility rules alongside a permanent solidarity mechanism for countries whose asylum, reception and migration systems face disproportionate pressure.

The legislature calls its central instrument the Annual Solidarity Pool: each year, Member States make available relocations, financial contributions and alternative measures such as staff, services, facilities or technical equipment, while the Commission identifies which countries are under migratory pressure. The Pool thus connects an assessment made at one end of the annual cycle, concerning where pressure is concentrated, with contributions organised at the other.

The solidarity available through the Pool can change under the fourth subparagraph of Article 60(3): if the Commission identifies, in a decision under Article 11 or Article 59(4), systemic shortcomings in a benefitting State's application of the responsibility rules that could result in serious negative consequences for the functioning of the AMMR, contributing Member States are no longer required to implement their pledges or responsibility offsets towards that State. The pressure finding and the compliance finding can coexist, leaving recognised needs in place

while changing which contributions other Member States must deliver.

Greece and Italy are subject to both assessments in the 2026 Annual Migration Management Cycle. In its Implementing Decision (EU) 2025/2323 of 11 November 2025, the Commission identified both as Member States under migratory pressure, making them eligible to use the 2026 Pool. Article 4 required a further assessment by 12 July and again by 15 October 2026 of whether practices observed under Dublin III had been remedied or constituted systemic shortcomings within Article 60(3). For Greece, the decision referred to the Commission's April 2025 conclusion that transfers to mainland Greece should resume in accordance with EU law; for Italy, it recorded the suspension of most incoming Dublin transfers since December 2022 and the Court's confirmation in *Tudmur* that the responsible Member State cannot unilaterally discharge itself from that responsibility (para 42).

The July assessment, published on 15 July 2026, covered only the opening weeks of the AMMR. Greece had begun accepting take-charge requests and take-back notifications, and the Commission recorded greater operational cooperation with other Member States; no transfer requests had yet been submitted, leaving insufficient experience to establish whether the earlier practices had been fully remedied (pp 5 and 8). Italy had made substantial legislative, technical and administrative preparations, yet between 12 June and 7 July other Member States requested twelve transfers and Italy rejected all twelve; one transfer based on a request confirmed before 12 June took place (p 7). The Commission retained both countries for the October assessment.

The assessment therefore concerns how the Commission gives effect to a legislative condition on solidarity within a policy whose implementation remains governed by Article 80 of the Treaty on the Functioning of the European Union (TFEU). When Article 60(3) releases contributors from mandatory support towards a country whose migratory pressure remains recognised, what legal significance do the earlier findings of need retain for the instruments still available? The analysis below considers the first annual cycle as it stands on 8 October 2026, before the second assessment deadline.

From pressure to the Pool

The annual cycle begins with the Commission determining where migratory pressure exists and what demands it places on national asylum and migration systems. Articles 9 to 11 require consideration of arrivals, applications, reception systems, transfers, previous pressures and the wider Union situation. Under Article 2(24), "migratory pressure" concerns arrivals or applications creating disproportionate obligations relative to the overall Union situation, including recurring search-and-rescue disembarkations. A State so identified becomes a benefitting Member State upon notifying the Commission and Council that it intends to use the Pool; under Article 58, it must specify the type and level of support needed, including relevant use already made of the Permanent EU Migration Support Toolbox. Classification establishes eligibility, while notification connects that finding to the support sought.

For the first Pool, the Council fixed reference levels of 21,000 relocations and EUR 420 million in financial contributions, supplemented by alternative solidarity measures pledged by individual Member States. These are reference levels for calculating solidarity, with Member States able to choose the form of their contributions. Article 56 allows relocations of applicants and, by bilateral agreement, recent beneficiaries of international protection; financial contributions towards migration, reception, asylum and related measures; and operational support including staff, facilities, services and equipment. Under Article 63, responsibility offsets allow a contributing Member State, in specified circumstances, to examine an application that would otherwise remain the benefitting State's responsibility, including where the applicant is already in the contributing State.

Article 80 TFEU requires EU policies on borders, asylum and immigration, together with their implementation, to be governed by solidarity and fair sharing of responsibility, including financial implications. The Court of Justice relied on that principle when it upheld the 2015 emergency relocation mechanism in *Slovakia and Hungary v Council* and later held Poland, Hungary and the Czech Republic in breach of their relocation obligations. In *Commission v Poland, Hungary and the Czech Republic*, the Court stated that the burdens created by those measures had, in principle, to be divided among the other Member States in accordance with Article 80 (para 80). The AMMR institutionalises solidarity through a recurring annual structure in which pressure is assessed and contributions are assembled as part of ordinary migration management.

When responsibility changes solidarity

The same Regulation that organises the Pool requires Member States to apply the responsibility rules correctly and expeditiously and, where necessary, carry out transfers to the responsible State. Article 60(3) connects performance of those duties to solidarity through a Commission finding of systemic shortcomings capable of seriously affecting the AMMR's functioning. The finding must connect the pattern of failures to the risk for the common system, with reasons meeting Article 296 TFEU; individual transfer disputes alone do not establish that threshold. Once it is met, the pledges and responsibility offsets contributors would otherwise implement towards the benefitting State lose their mandatory character.

If a benefitting State systematically obstructs the responsibility rules, it can leave other Member States examining applications for which it remains responsible, affecting the distribution of obligations that the Pool is designed to support. Article 60(3) makes that conduct legally relevant across relocations, responsibility offsets, financial contributions and operational support. Its wording releases contributors from the requirement to implement the affected measures towards that State, while leaving room for voluntary support.

Greece and Italy qualified for the 2026 Pool after the Commission found disproportionate obligations within their asylum and migration systems. Article 60(3) examines a later part of the same cycle: whether the State's application of the responsibility rules has developed systemic shortcomings serious enough to affect the obligations of contributors. The pressure finding concerns demands on the national asylum and migration system; the Article 60(3) assessment concerns the State's performance within the common responsibility system. Each follows its own criteria, so an adverse Article 60(3) finding can alter contributors' obligations while the earlier classification of migratory pressure remains in force.

If those findings coexist, the annual cycle reaches a configuration that the Regulation addresses in separate pieces: pressure remains recognised, some mandatory contributions fall away, and the Toolbox and other support mechanisms continue under their own provisions. The treatment of the needs already identified under Articles 11 and 58 must then be considered through Article 80 TFEU and those remaining mechanisms.

After Article 60(3): the support that remains

The AMMR contains several routes through which support can continue outside the pledges affected by Article 60(3). Article 6(3) establishes the Permanent EU Migration Support Toolbox, including operational and technical assistance from Union agencies and support from Union funds. Under Article 13(4), where the Council considers contributions insufficient, needs higher than anticipated or the overall situation to require further solidarity, it must reconvene the High-Level EU Solidarity Forum by simple majority to request additional contributions. Using that route after an Article 60(3)finding would still require attention to the release applicable towards the State concerned. Article 58 also places the Toolbox and the Pool within the same account of needs by requiring the State to identify relevant use already made of those support measures.

Once Article 60(3) changes the contributors' obligations, continuing support depends on mechanisms governed by separate legal conditions. Union agencies act within their mandates, Union funding follows the programmes through which it is provided, additional solidarity requires further contributions, and reconvening the High-Level Forum requires a new institutional decision. The passage from mandatory pledges to those remaining forms of support is left to subsequent action by the Union and its Member States. A need identified for the annual Pool moves into a more dispersed set of mechanisms once the pledge originally directed towards it ceases to be mandatory.

Article 80 TFEU expressly applies to Union policies on borders, asylum and immigration and to their implementation. Article 6 AMMR repeats that principle within the Regulation and links it to adequate reception, correct application of the responsibility rules and effective support between Member States. Read together with the Toolbox and renewed coordination provisions, those rules support an interpretation in which the earlier pressure assessment remains relevant after Article 60(3) is activated: the Commission should identify which previously recognised needs remain, which mandatory contributions have fallen away and which available instruments can still respond to the situation.

Article 80 does not itself prescribe a substitute amount or allocation, and the AMMR contains no automatic rule replacing every contribution affected by Article 60(3). The interpretation concerns the Commission's assessment and use of the mechanisms the Regulation preserves: continuing needs should inform decisions about agency assistance, funding and renewed

coordination, with resulting measures subject to their own legal conditions.

The continuing reception and asylum obligations give that assessment consequences for applicants. Financial and operational contributions can sustain the systems through which applicants exercise rights conferred by EU law, while relocations and responsibility offsets can reduce the number of people or applications remaining with the benefitting State. Article 6(2)(a) continues to require effective access to international protection and adequate reception. A change in inter-State solidarity obligations leaves those duties in place, making the adequacy of the remaining support relevant to the common system's functioning.

Three possible Octobers

A finding that Greece or Italy has remedied the practices identified during the transition from Dublin III would preserve the ordinary operation of solidarity towards that State and show what the Commission considers sufficient cooperation in the circumstances that led it to keep that country under review. Greece's July record suggests that acceptance of responsibility requests and take-back notifications forms part of that assessment, while Italy's record places the practical execution of transfers and cooperation over their logistical arrangements at the centre of the October review. The Commission's reasons could begin to give operational content to the positive side of a threshold presently expressed through "systemic shortcomings" and "serious negative consequences".

The Commission may also identify continuing failures whose scale and effects remain below the Article 60(3) threshold. Such a finding would begin to distinguish incomplete implementation during the first months of the AMMR from a pattern serious enough to alter other Member States' solidarity obligations, a distinction that will extend beyond Greece and Italy as later annual cycles expose other benefitting States to the same provision. Duration, repeated rejection of transfers, operational cooperation between national authorities and the consequences for the allocation system may all become relevant to that assessment, although the Commission's October reasoning will determine which factors receive legal weight.

If the Commission finds systemic shortcomings meeting the Article 60(3) threshold in Greece, Italy or both, the State concerned could still carry the Union's classification of migratory pressure, while contributing Member States would cease to be required to implement the

affected pledges and responsibility offsets towards it. The Commission would then have to read its earlier assessment of pressure alongside a later finding changing mandatory solidarity. The collective response to any continuing needs would have to be assembled from the Toolbox, agency support, voluntary contributions and renewed coordination, each operating under its own conditions.

The Pool and the Pressure

The October assessment can clarify how the Commission applies a condition intended to protect cooperation while implementing a common policy governed by Treaty solidarity. The legal question extends beyond which pledges contributors cease to owe: the Union has already identified needs within the same system whose functioning Article 60(3)protects. The Commission's reasoning should identify which recognised needs remain and which instruments under the AMMR can address them, giving future annual cycles a basis for treating pressure that persists after failures in responsibility alter the solidarity originally organised in response.

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