

Department of Political Science

Master's Degree in International Relations  
Major in Mediterranean Governance

Course in EU Neighbourhood - Policies and Migration

# Harmonization of EU Asylum Policy: the 2015 refugee crisis and the New Pact on Migration and Asylum

Prof. Maria Giulia Amadio Viceré

---

SUPERVISOR

Prof. Gianfranco Pellegrino

---

CO-SUPERVISOR

Camilla Lombardo  
Student No. 645472

---

CANDIDATE

ACADEMIC YEAR 2021/2022



## *Acknowledgments*

My biggest thank you is for my thesis supervisor Professor Maria Giulia Amadio Viceré. Her course on EU Neighbourhood has been enlightening and got me even more passionate about these topics. The process of concluding this thesis has not been easy; however, despite my inclination at working independently, she has always provided me with guidance and suggestions when in need. The same goes for Dr. Capati for his detailed and prompt corrections, thank you.

I will be forever grateful to LUISS University for having gifted me not just with knowledge and competencies but with dedication, persistence, and the right mindset to face all kinds of challenges. I feel lucky to have had the opportunity to learn your many teachings.

Finally, I would like to thank my family for supporting me every step of the way, in my ups but especially during my downs. To my friends, thank you for always being by my side. This achievement is dedicated to all of you.

## TABLE OF CONTENTS

<b><i>Abstract</i></b> .....	<b>7</b>
<b>INTRODUCTION</b> .....	<b>8</b>
<i>Introduction and Research Questions</i> .....	8
<i>Existing Literature</i> .....	9
<i>Theoretical Framework: Neofunctionalism</i> .....	11
<i>Case Study: The New Pact on Migration and Asylum</i> .....	13
<i>Methodology and Data</i> .....	15
<i>Structure of the Thesis</i> .....	15
<b>CHAPTER 1: Institutional Framework and Developments of EU Asylum Policy</b> .....	<b>18</b>
1.1 <i>Introduction</i> .....	18
1.2 <i>Institutional Framework: Legal Basis and Legislative Instruments</i> .....	19
1.3 <i>Historical Developments In Europe</i> .....	22
1.4 <i>The Institutionalization Process</i> .....	25
1.4.1 <i>Before The Lisbon Treaty</i> .....	25
1.4.2 <i>Post-Lisbon Treaty</i> .....	31
1.5 <i>Conclusions</i> .....	33
<b>CHAPTER 2: The 2015 Refugee Crisis</b> .....	<b>36</b>
2.1 <i>Introduction</i> .....	36
2.2 <i>The Context of the Crisis</i> .....	37
2.3 <i>Political Debate and Policy Response</i> .....	40
2.4 <i>The Aftermath of the Crisis: Policy Outcomes</i> .....	45
2.5 <i>Conclusions</i> .....	48

<b>CHAPTER 3: The New Pact on Migration and Asylum .....</b>	<b>50</b>
<i>3.1 Introduction .....</i>	<i>50</i>
<i>3.2 Objectives of the Pact.....</i>	<i>51</i>
<i>3.3 Legislative Content.....</i>	<i>53</i>
<i>3.4 Commentary and Criticisms.....</i>	<i>57</i>
<i>3.5 Conclusions .....</i>	<i>60</i>
<b>CONCLUSIONS .....</b>	<b>62</b>
<b>BIBLIOGRAPHY .....</b>	<b>67</b>
<i>Summary.....</i>	<i>76</i>

*List of abbreviations*

AFSJ	Area of Freedom, Security and Justice
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard Agency
EC	European Communities
EEC	European Economic Community
EU	European Union
EUAA	European Union Agency for Asylum
IOM	International Organization for Migration
JHA	Justice and Home Affairs
NGOs	Non-Governmental Organizations
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

## *Abstract*

The general objective of the thesis is to analyse the work of the European Union in the framework of its asylum policies and of the Common European Asylum System, with particular regard to the supranational role played by the European Commission. The CAES has shown in the past its weakness, especially in the case of the 2015 refugee crisis, which may derive in part from the very nature of European integration in asylum policy and from the lack of solidarity, shared responsibility, and trust among member states. In 2020, the European Commission proposed to reform the system through the New Pact on Migration and Asylum, which claims to account for a comprehensive European approach to asylum and migration. The main focus will be on the policies introduced to manage migration and asylum flows during the crisis and in its aftermath, arriving to the latest proposal of the New Pact on Migration and Asylum with the aim of understanding the way in which the criticalities previously encountered in this policy field are addressed through supranational efforts. The theoretical base from which the thesis unfolds is outlined by the neo-functionalist theory of European integration, which may explain the level of integration of asylum policies at EU level and the dynamics of policy- and decision-making that have ultimately led to the proposal by the European Commission of the New Pact on Migration and Asylum.

*Keywords:* asylum; harmonization; Common European Asylum System; refugee crisis; New Pact on Migration and Asylum.

## INTRODUCTION

### *Introduction and Research Questions*

Among the main pillars upon which the European Union is founded there are the respect of human rights and the solidarity among member states, as stated in Article 2 TEU as well. These two concepts relate strictly to migration and asylum policies, which today are considered of crucial importance for the building of a stronger European Union. Article 3(2) TEU indeed cites: “the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”. This Treaty Article therefore makes clear that a primary objective of the European Union is to establish an area of freedom, security and justice which should take account of asylum matters as well. This is stressed again in Article 67(2) TFEU which states that one of the primary objectives of the EU is to build a common asylum policy based on the shared solidarity between member States.

Asylum and migration policies are crucial also in terms of political debate both at the national and supranational level. These topics are considered to be very divisive in the public opinion as well and for this reason member states’ governments are more interested in retaining this policy area as a national interest. This undoubtedly leads to a strong political polarization within EU policy- and decision-making venues. This was clear in particular during the 2015 refugee crisis when frontline member states found themselves in a situation of emergency following the unprecedented arrivals of thousands of refugees on their borders. During those years indeed, migration and asylum rapidly became the main concerns for EU policy makers. However, the crisis has emphasised not only the shortcomings of the EU asylum reception system but also the divergent positions of member states in terms of how to respond to the crisis and of the future of the asylum policy field. For this reason, it is also argued that, despite cooperation on asylum policies did indeed happen within the EU framework, national political elites continued to control the decision-making process and retain their bargaining power (Guiraudon, 2018). At the same time, however, it is undeniable that since the creation of European Union, the asylum policy field has witnessed many steps of integration and the strengthening of supranational competences as well. This thesis lies its foundation on this perspective.



The general objective of the thesis is to analyse the work of the European Union in the framework of its asylum policies and of the Common European Asylum System (CEAS), with particular regard to the supranational role played by the European Commission. The CEAS has shown in the past its weakness, especially in the case of the 2015 refugee crisis, which may derive in part from the very nature of European integration in asylum policy and from the “lack of solidarity, shared responsibility, and trust among member states” (Bendel & Ripoll Servent, 2017). In 2020, the European Commission proposed to reform the system through the New Pact on Migration and Asylum (2020), which claims to account for a comprehensive European approach to asylum and migration. The main focus will be on the policies introduced to manage migration and asylum flows during the crisis and in its aftermath, arriving to the latest proposal of the New Pact on Migration and Asylum with the aim of understanding the way in which the criticalities previously encountered in this policy field are addressed through supranational efforts. The final goal is to highlight through what policies and decision-making dynamics it is possible to reach a higher level of harmonization at EU level in this policy area.

Following from this, my research questions are: *How does the EU respond to the challenges related to the management of the migration crisis in a more harmonized way? And how does the New Pact on Migration and Asylum fit into this framework?*

### *Existing Literature*

To answer these research questions, I will draw on the existing literature in the field of European integration and asylum policies and on past and current European legislation dealing with these matters. A lot has been written about the EU asylum system and policies since the beginning of its institutionalization process. Much of the existing literature in this policy field revolves around the questions of European harmonization and integration which led to a scholarly debate over the degree of cooperation at EU level on asylum issues and the theories that best account for this. Guiraudon (2000) was the first to advance the theory of venue-shopping, arguing that national institutional actors began cooperating on asylum and migration issues at the EU level in order to overcome the domestic constraints encountered when seeking to implement more restrictive policies in the 1980s and 1990s. Kaunert and Léonard (2012) explored the venue-shopping thesis arriving to the conclusion that since the EU asylum policy-making venues have

changed with time, thanks to processes of integration of this policy area, asylum standards in the EU have actually been raised rather than being more stringent.

Zaun (2017) provides for a significant empirical, theoretical and methodological contribution to the existing literature on the subject. She demonstrated how member states that are strong regulators, meaning that have highly functioning asylum systems in place and therefore more bargaining power, shaped EU asylum policies and pushed their ideas on the other member states.

A big part of the literature is composed of working and policy papers on the 2015 refugee crisis, which from a mainly descriptive analysis point of view underline the critical points of the EU asylum system and the lack of an efficient response to the crisis. Indeed, scholarly debate generally converges on the idea that the EU has failed to efficiently respond to the crisis and to take advantage of the situation for bringing further integration in the asylum policy field. The work of Niemann and Zaun (2018) provides for a first systematic assessment of the crisis both in theoretical terms, by applying and developing different theoretical approaches to European integration theory to the events of the crisis, and from an empirical perspective, by offering new empirical evidence of the measures adopted by the EU in response to the large influx of refugees. In this sense, Guiraudon (2018) speaks of policy inertia in border controls measures in the aftermath of the refugee crisis as she argues that Interior ministries and chiefs of governments and states gained with time more and more margins of manoeuvre within European intergovernmental decision-making venues, therefore it seems difficult to break their monopoly over the regulation of asylum and migration at the EU level. Trauner (2016) as well, argues that in response to the crisis the EU has indeed pushed for new policy instruments in order to maintain the core of its asylum regime, however it failed to address the shortcomings of the system and in fostering more integration.

To this day, there are some academic works that focus on particular aspects of the New Pact on Migration and Asylum, but the literature lacks a comprehensive analysis of the proposal and the way it relates to the harmonization goal that it aims to achieve. However, researchers generally converge on the idea that the legislative proposals present in the Pact do not fulfill the objectives the Commission had set out. Majcher (2021) focuses for example on the return system under the Pact and analyses both its effectiveness and the compliance with human rights concluding that actually both these aspects are pitted against each other. Carrera (2021) goes as far as to conclude in his assessment of the Pact that it does not in itself pursue a true union on asylum and migration matters as it “runs the risk of pursuing intergovernmentalism, of

establishing a European asylum system of asymmetric interstate solidarity and legitimising Member States' policies focused on speed, localisation and externalisation".

This thesis aspires to contribute to the existing literature by offering a comprehensive assessment of the way the Commission tries to address the shortcomings of the asylum system through the New Pact and therefore the role it plays in pushing for more harmonization among member states in this policy field.

### *Theoretical Framework: Neofunctionalism*

The theoretical base from which the thesis unfolds is outlined by the neo-functionalist theory of European integration, which may explain the level of integration of asylum policies at EU level and the dynamics of policy- and decision-making that have ultimately led to the proposal by the European Commission of the New Pact on Migration and Asylum. There are many other theories of European integration employed by scholars, but since the main focus of this thesis is on the harmonization attempts carried on by a supranational institution such as the European Commission, neofunctionalism better fits into this framework. Already since the outbreak of the refugee crisis in 2015, the European Commission has presented several measures aimed both at finding solutions to the emergency and at planning future management tools to address the migration crisis. However, these measures have so far showed the shortcomings of the CEAS (Nieman & Zaun, 2018). The argument is that the refugee crisis, from whose failure the proposal of the New Pact on Migration and Asylum originates, together with the level of integration already in place in asylum policy, created a 'spill overs' effect which resulted in the development of this latest attempt at greater harmonization by the European Commission.

The neo functionalist theory was first developed by Haas in 1958 with the aim of explaining regional integration in Europe in the aftermath of World War II. The original idea behind neofunctionalism is based on the notion that cooperation in one policy field would place pressure on another related policy field and therefore leading to further integration. It rests on the premise that certain policy sectors are so interdependent that they cannot be excluded from the integration process. Therefore, the regional integration of one sector is only possible in combination with the integration of other sectors, "as problems arising from the functional integration of one task can only be solved by integrating yet more tasks" (Niemann, 2021: 118).

That is why Haas and other scholars have then advanced the concept of spillovers to explain this process. The term functional spillovers precisely defines the integration process that results from a functional interest. In particular, Haas (1958) argued that the creation of the European Economic Community based on economic integration would foster integration in all the other policy spheres. In this sense, the theory gained much consensus in the early 60s in Europe as it applied well to the integration process that the Community was undergoing during those years. Other two kinds of spillovers were developed to explain neofunctionalism: political and cultivated spillovers. Political spillovers occur when there is a shift of loyalty for national political elites from national to supranational policy- and decision-making venues because it is acknowledged that supranational cooperation is necessary to find solutions to specific problems; this would provide supranational institutions with political pressure for integration. In this sense, the role played by supranational institutions would give additional incentive for regional integration; this is the concept at the base of cultivated spillovers. In particular, Haas (1961) envisaged the expansion of the European Commission's mandate hand in hand with the increasing of the overall integration process in Europe. Lindberg (1963), another founder of neo-functionalism, also highlighted the Commission's role in cultivating ties with national governments and in fuelling the inter-relations dynamics among member states within EU policy- and decision-making venues.

From the mid 60s scholars started to cast doubts on the assumption at the base of the theory according to which integration would basically follow naturally (Niemann, 2021). But then, the neofunctionalist approach was revived again in the 80s and 90s because that is when the foundation for the creation of the European Union as we know it today were laid.

Since its publication this theory has been revisited by many scholars (see i.e.: Hooghe and Marks, 2008) and has been applied to many different policy areas within the EU. For instance, in the field of economic and fiscal integration, neofunctionalism may easily explain the level of integration resulting from the euro crisis (see i.e. Niemann and Ioannu, 2015). The neofunctionalist theory has been applied to the migration field as well. Indeed, it could be argued that the Schengen Agreement (1985), because it allowed for the free movement of people within Europe, led to a convergence of member states' interests on the external borders, therefore making migration and asylum policies into the EU policy agenda. With the 2015 refugee crisis, some scholars tried to test the neofunctionalist assumption to the EU policy response. Niemann and Speyer (2018) argued that the creation of the European Border and Coast Guard Agency in the aftermath of the crisis was indeed a consequence of the "functional interdependencies between Schengen (the abolition of internal borders), and the consequent

need for stronger co-operation on external border management” which had not been previously addressed. Scipioni (2018) applies the same reasoning to the creation of the European Asylum Support Office in the aftermath of the refugee crisis. However, following neofunctionalism, we should have witnessed further integration steps within the EU asylum policy field resulting from the spillovers’ effects created by the crisis; a circumstance that did not happen. For this reason, to this day, neofunctionalism is not very often employed by scholars compared to other integration theories within research on integration of EU asylum and migration policies. However, it could still provide for important contributions in understanding certain aspects of the integration process. For the purpose on this thesis in particular, neofunctionalism and the concept of cultivated spillovers perfectly fits into the framework delineated by my research questions on the Commission’s. Therefore, following from this, the hypothesis this thesis wants to test is the following: Building on its right of legislative initiative, the European Commission seeks to promote deeper integration and harmonisation of asylum policies at the EU level. This hypothesis is tested on the New Pact on Migration and Asylum.

### *Case Study: The New Pact on Migration and Asylum*

Migration, asylum and border control policies reached the top of the EU agenda in the summer and fall of 2015 and the events of this crisis put into question the Common European Asylum System as a whole. The measures put forward by the European Commission within the European Agenda on Migration (2015) to face the crisis varied across a wide range of priority actions, both on an internal and external dimension; for example, through the introduction of hotspots, measures of responsibility-sharing or externalization to third countries (Niemann & Zaun, 2018). However, the scholarly debate on the matter generally concludes that the EU failed to reform its policies in the aftermath of the crisis and in this way, failed to address the shortcomings present. The case study presented regards the New Pact on Migration and Asylum, as its proposal represents the latest attempt by the European Commission to seek further integration and harmonization among Member States in migration and asylum policies. Therefore, it serves as an exemplary case for highlighting the role of the Commission in both its agenda-setting role and in its continuing efforts in promoting further integration of EU asylum policies.

Two crucial points on which the New Pact sets out its overall action are the enhancement of procedures and their implementation, acknowledging the differences in migration management present across member states, and the need for a balanced system of responsibility and solidarity among them, thus also recognizing the lack of these principles in facing the crisis in 2015. The President of the European Commission von der Leyen declared in September 2019 that the Commission was working on releasing a New Pact on Migration and Asylum, which would have established a comprehensive EU strategy with regard to asylum, migration, and border control issues. The Pact was then published on the 23 September 2020. The main stated goal is that of addressing the structural and systemic flaws found within the CEAS and at the same time, reach a higher level of harmonization in the migration management and asylum systems of member states. As for the legislative content, the Pact builds on the earlier proposals made in the wake of the refugee crisis; however, it offers a more comprehensive approach compared to the previous proposals as it introduces new instruments that are necessary for the creation of a unified framework for migration and asylum management. The legislative package included in the Pact consists of a new Screening Regulation, a new Asylum and Migration Management Regulation, a new Asylum Procedures Regulation, a new Asylum and Migration Management Regulation, and a new Crisis and Force Majeure Regulation. All these tools are intended to provide an updated and thorough legislative framework for managing immigration and asylum as well as to lay down quicker and more effective procedures. The Pact also includes three recommendations: a new migration readiness and crisis plan, on search and rescue operations by private vessels, and on resettlement and complementary paths. In terms of procedures, the Commission suggests a standard approach at the borders that includes a pre-entry screening for all unauthorized immigrants who arrive at EU external borders or who have disembarked after search and rescue operations. The next step is to direct the migrants in question via the appropriate procedure, whether it be the standard asylum procedures or the asylum border procedure, which allows for a quicker response at the external borders.

The legislative process on these proposals have been slower than what had been declared initially by the Commission, mainly because the topics address concern issues that are very divisive within EU intergovernmental decision-making venues. A Joint Roadmap to implement a timeline for the negotiations on all these reforms before the end of the 2019–2024 legislative session, was adopted in September 2022 by the European Parliament and the Rotating Presidency of the Council. This is one of the most recent updates.

## *Methodology and Data*

The methodology employed for this thesis amounts to a systematic assessment of the institutional and policy framework of EU asylum policies following the theoretical framework of neo-functionalism. Overall this thesis' work is developed in a mainly chronological order, highlighting the role of the European Commission firstly in the response to the 2015 refugee crisis and then with the publication of the New Pact on Migration and Asylum in 2020. Indeed, starting from the institutionalization process of EU asylum policies, then inspecting the 2015 refugee crisis and the EU response, and finally arriving to the New Pact on Migration and Asylum, this thesis highlights the Commission's efforts to reform the EU asylum system and harmonize asylum policies at the EU level.

For the first chapter I will draw first and foremost on the official legislative documents that make up primary and secondary legislation in matters of asylum and on the academic paper that cover the historical evolution of the asylum policy field. Then, for the second chapter, the analysis proposed with regard to the 2015 refugee crisis is based mainly on academic research articles. The selected bibliography all contributes to the inspection of the research questions and to test the hypothesis, whether by supporting it or offering a contrary opinion. This also applies to the last chapter, which offers a case-study analysis of the New Pact on Migration and Asylum based on the inspection of the official documents of the proposals and of academic papers.

## *Structure of the Thesis*

To answer the research questions and test the hypothesis, this thesis starts from the delineation of the institutionalization process of this policy area and the current institutional setting. For many years, asylum and migration policies have been seen as major objectives for the construction of a zone of freedom, security, and justice in the EU, and many scholars have been interested in analysing the integration and cooperation project of this policy area. The goal of this chapter is to look at the different phases and policy- and decision-making dynamics that led to the level of harmonisation of asylum policies that currently exists at the EU level. The first paragraph serves as an explanation of the institutional framework of this policy field in terms of both its legal basis to be found the Treaty and the secondary legislation, which includes

all legislative instruments adopted within the Common European Asylum System. The following paragraph examines the historical situation in Europe in terms of refugee protection prior to the formation of the EU with an analysis of the 1951 Geneva Refugee Convention, which represents the normative foundation for the developments of EU asylum policies. During this development, a first breakthrough happened in the 1990s when this policy area started to be considered as a European wide concern. With the Maastricht Treaty and the Amsterdam Treaty the first steps in the institutionalization process of asylum policies were taken, arriving to the Tampere Council in 1999 which led to the establishment of the CEAS. The last paragraph precisely discusses all the phases of this institutionalization process up to the Lisbon Treaty, which transformed the EU asylum policy framework from basic standards to common ones.

Afterwards, moving on a deeper level within this policy framework, the following chapter analyzes the 2015 refugee crisis. More specifically, the main focus is on the policy response resulting from the interplay between the European Commission and the member states, placing the emphasis on the criticalities resulting from shortcomings present both in the policy content and in the Common European Asylum System as a whole. When discussing EU asylum policies and the integration process, it is impossible not to address the 2015 refugee crisis, which called into question the CEAS as a whole, as well as the EU's previous successes in this policy area. Contrary to public perceptions, the crisis situation was not as unexpected because the EU had been keeping an eye on asylum seeker arrivals at its borders and had noticed a rise even before it reached its peak. The first paragraph of this chapter examines the circumstances that led to a situation of crisis, both exogenous, mainly the poor geopolitical situation in many parts of the MENA region, and endogenous, since certain border control measures that some member states have implemented during the years have had an impact on migration flows. Moreover, the modalities through which the crisis unfolded are inspected as well. The second paragraph goes into details of the actions taken by the EU in reaction to the crisis as well as the resulting political debate. It is highlighted the job done by the European Commission in proposing measures in support of the frontline member states that had been hit the hardest by the crisis and in trying to push for more solidarity. Indeed, the redistribution of asylum seekers across the EU was the main point of contention and this led to a strong political polarization within EU policy- and decision-making venues. The final section of this chapter discusses the effectiveness of the EU response to the crisis and subsequent policy outcomes, arguing that, despite the common assumption in scholarly debates that the EU has failed to effectively respond to the crisis situation, it is clear that the Commission has nonetheless played a crucial



role both during the crisis as agenda-setter and in the years that followed as an advocate for the reform of the EU's refugee system.

This evaluation so far serves as the basis for the analysis of the New Pact on Migration and Asylum, taking into account its institutional framework and the key themes addressed with regard to the criticalities encountered within the EU asylum system before. Indeed, the objective of this final chapter is to provide a critical evaluation of the proposed legislative amendments and highlighting the ongoing Commission's efforts to overcome the shortcomings of the CEAS and to push for more integration at the EU level. The Pact was published by the Commission in September 2020 and provides for a multi-year policy agenda on issues that have been at the center of the political debates around asylum policies and central to the discussion over the Commission's project of fostering more integration of this policy area. An outline of the context of the Pact is proposed in the first section of the chapter, as well as a statement of the objectives to achieve through the legislative proposals with the goal of better understanding the key components that make up the new legislative framework. The second paragraph goes deeper into details of the legislative elements proposed within the Pact by analyzing the Asylum Procedures Regulation, the Screening Regulation, the Crisis and Force Majeure Regulation and the new Asylum and Migration Management Regulation, which represent the primary legislative initiatives that would modify the current EU asylum system. The Asylum and Migration Management Regulation in particular is relevant because it specifically tries to address the problems of responsibility-sharing and solidarity among member states which have been identified as the main critical issues when discussing asylum policies in EU policy- and decision-making venues. The final paragraph of this chapter encompasses a commentary on the legislative content and the goals it aims to accomplish. An analysis of the criticisms revealed in terms of both political and procedural aspects is offered as well. Scholars generally agree that the Pact falls short of its stated goals and that the measures it proposes are ineffective at addressing the problems with the management of the EU asylum system.

## CHAPTER 1

# INSTITUTIONAL FRAMEWORK AND DEVELOPMENTS OF EU ASYLUM POLICY

### 1.1 INTRODUCTION

Asylum and migration policies have been considered, for some years now, as key objectives for the establishment of an area of freedom, security and justice in the EU and analysis of the integration and cooperation project of this policy area have been of interests for many researchers. The aim of this chapter is indeed to investigate the steps and the policy- and decision-making dynamics that contributed to the level of harmonization of asylum policies we have today at the EU level.

The first paragraph intends to explain the institutional framework of this policy field in terms of both its legal basis to be found in the Treaty and of the secondary legislation as well, meaning all the legislative instruments, like the Directives and the Dublin Regulation, adopted within the Common European Asylum System, which is the framework upon which EU asylum policies rest. The second paragraph addresses the European situation of asylum protection before even the creation of the EU, arriving to an analysis of the 1951 Geneva Refugee Convention. Indeed, the regime created by the Convention has represented, and still does, the normative foundation of the European Union asylum system and of all the developments that followed. A real breakthrough in the development of EU asylum policies happened only in the 1990s when this policy area began to be considered as a topic of mutual concerns. In fact, since the end of the 80s and through all the 90s, asylum applications in Europe started to rapidly increase as a consequence of the broader political situation in the continent as the USSR collapsed and the Yugoslavian wars began (Bendel & Ripoll Servent, 2017). It is during those years that the first steps in the direction of institutionalization of asylum policies at the EU level were made. This institutionalization process was envisaged as an attempt to standardize and coordinate the levels of asylum protection across the Union, which at the time were rather uneven, and ensure a more equal treatment for asylum seekers arriving in Europe. The last paragraph precisely discusses these steps of the institutionalization process taken at the EU level and subsequently, the supranationalization attempts of this policy area made by the European Commission. At first, the Schengen Agreement and the Dublin Convention, signed

respectively in 1985 and 1990, marked the first approaches towards asylum matters. Further steps were then taken through treaty-making, first the Maastricht and then the Amsterdam Treaty, which called for minimum standards for asylum reception across the EU. However, the real breakthrough of those years was the Tampere Council in 1999 which contributed greatly to asylum policy-making because that is when the Common European Asylum System was conceived. This was before the Lisbon Treaty. The latter indeed, marked a shift for asylum policy- and decision-making insofar as we could talk of a post-Lisbon phase. The Treaty indeed changed the EU asylum system from basic standards to building a common system with a uniform status and uniform processes for the whole Union.

## 1.2 INSTITUTIONAL FRAMEWORK: LEGAL BASIS AND LEGISLATIVE INSTRUMENTS

The legal basis of EU asylum policies and of the CEAS lies in art. 67(2), 78 and 80 of the Treaty on the Functioning of the European Union (TFEU). These articles make up for EU primary law in matters of asylum.

Article 67(2) TFEU states that one of the primary objectives of the EU is to build a common asylum policy based on the shared solidarity between member States. This latter concept is underlined more explicitly also in Article 80 TFEU, which affirms that “the policies of the Union set out in this Chapter [chapter two “Policies on border checks, asylum and immigration” under Title V “Area of freedom, security and justice”] and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States”.

Article 78 TFEU outlines the policy measures to adopt for a common asylum system calling for common standards on asylum protection and procedures. The second sentence of Article 78(1) mandates that this common policy must be in accordance with the Geneva Convention on the Status of Refugees (1951) and its related Protocol (1967) to which all member States are parties. Indeed, the development of an area of asylum protection at the EU level found its cornerstone in the Geneva Refugee Convention. This is also stressed in Article 18 of the EU Charter of Fundamental Rights, which specifies that “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees [...]”. The explicit reference to the Geneva

Convention in the Treaty of Lisbon as well as in the Charter tightly links the legitimacy of the measures present in Article 78 TFEU to the conditions conveyed in the Convention. This means that the Convention should be used also to evaluate the validity of the instruments introduced by the legislature. Therefore, it is unavoidable for the EU to take this into consideration when it legislates on asylum.

The measures to be adopted to build a common asylum system are outlined in the second paragraph: Article 78(2) TFEU states that “[...] the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising: (a) a uniform status of asylum for nationals of third countries, valid throughout the Union; (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection; (c) a common system of temporary protection for displaced persons in the event of a massive inflow; (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection; (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.”.

The system set up with the creation of the CEAS is today governed by five main legislative instruments - the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation and the EURODAC Regulation, which constitute secondary law - and one agency, the European Union Agency for Asylum.

In 2000 and 2001 the Commission proposed the legislation establishing the first phase of the CEAS which set out minimum standards for asylum protection on the basis of the provisions provided by the Treaty of Amsterdam. These instruments were then recasted during the second phase of the CEAS with the introduction of the Lisbon Treaty in 2009, which called for common standards and measures.

In 2000 the Commission, together with the Council, also decided to put in place a five-year financing scheme for asylum, the European Refugee Fund, designed to distribute resources to the countries that deal with asylum issues. In 2014 this fund was then replaced by the Asylum, Migration and Integration Fund, which provides funding over several years, the latest scheme being introduced in 2021.

Talking about the directives, the goal behind the introduction of the Asylum Procedures Directive (2013/32/EU) was to lay the groundwork for a fair, quick and high-quality process in the assessment of asylum applications. Indeed, it establishes a unified mechanism to ensure that decisions on asylum requests are made in an efficient way. This is done by setting explicit criteria for registering and lodging applications and establishing a time limit to assess the application, as well as by allowing border procedures and ensuring access to legal assistance. Moreover, this directive also defined the concepts of ‘first country of asylum’, which allows for the rejection of the application in case the applicant has been recognized as a refugee in another country, ‘safe country of origin’, which indicates a condition for which the application of an asylum seeker can be rejected if he/she comes from a country that is considered to be safe, and ‘safe third country’, which indicates the possibility for the asylum request to be assessed by a third country that is able to ensure safe conditions to asylum seekers (Kaunert, 2009).

The Reception Conditions Directive (2013/33/EU) provides for common standards on reception conditions across the EU in order to ensure good living standards for asylum seekers also in accordance with the EU Charter of fundamental rights. This includes housing conditions, food and clothing, access to health care and education.

The Qualification Directive (2011/95/EU) sets out the conditions that the applicant needs to satisfy when requesting refugee status as well as all the rights that the asylum seeker to whom the status of refugee has been granted possesses. The directive includes specific provisions for certain category of persons, like children and vulnerable people, as well as an explicit list of the rights awarded to refugees, including the right to a residency permit and to a travel document, the right to employment, education, healthcare and access to processes and facilities committed towards integration. Moreover, important to note, is that this directive also allows EU countries to introduce or maintain more favorable standards than those set out in it, meaning that it does not exclude the possibility that some member states may want or may already have higher standards of asylum protection compared to the provisions included in the EU legislative instruments on the matter.

In addition to these three directives, an instrument that is at the core of the public debate around asylum issues and plays a crucial role in it, is the Dublin Regulation. There have been three versions of the Dublin Regulation, the latest adopted in 2013. The objective of Dublin III is to ensure a quicker access to asylum procedures by clarifying the rules in the reception of asylum seekers among member states and more importantly, by determining the country that is responsible to for the examination of the application, that is the first country of entry of the asylum seeker. Together with provisions on protection of applicants, such as compulsory

personal interviews, guarantees for minors and family reunifications, the document also contains provisions for a mechanism for early warning, preparedness and crisis management designed to address the underlying dysfunctions of national asylum systems and address root causes before a crisis happens.

The Dublin III Regulation has been supported by the introduction of the EURODAC Regulation (No 603/2013), which allows member States to have access to a fingerprints database of asylum seekers entering the EU. The aim is to make sure that an asylum seeker hasn't already lodged a claim in another country and also in the case he/she might be involved in a criminal matter.

The European Union Agency for Asylum has also been introduced with the aim of contributing to improve the functioning and implementation of the CEAS. Until the beginning of 2022, the name of the Agency was European Asylum Support Office and entered into force in 2011 after a proposal by the European Commission back in 2008 to enhance member States' cooperation in handling asylum applications. In practice, the EUAA offers member States technical and operational support and advisory services in the evaluation of asylum seekers' requests within the EU.

After the second phase of the CEAS ended in 2013, other proposals and requests by the European Commission were made to reform the system, especially in the aftermath of the refugee crisis started in 2015. However, these recommendations were met with some reluctance by EU member States. This topic will be addressed in the next chapter.

### 1.3 HISTORICAL DEVELOPMENTS IN EUROPE

During the 19<sup>th</sup> Century, before the creation of the EU, in Europe the approach to refugee protection was intended at a domestic level, meaning that states were compelled to help refugees arriving on their territory only, like France did in 1832 with a law defining refugees as "ceux qui résident en France sans la protection de leur gouvernement"<sup>1</sup> and Belgium the following year with a law of non-extradition of political refugees<sup>2</sup> (Grahl-Madsen, 1966: 280). Other European states followed these examples and the number of bilateral extradition treaties adopted increased as well, a move probably linked to the idea of liberal democracy that was being rooted in the European continent during those years (Orchard, 2017; Orchard, 2014).

---

<sup>1</sup> Loi relative aux Etrangers refugies qui resideront en France, 21 April 1832.

<sup>2</sup> Loi sur les extraditions, No. 1195, 1 October 1833

However, this changed following World War I as the conflict resulted in a significant increase in the number of refugees. To add up to this, the changes in the states' structures all over the European continent as a result of the war contributed to a situation of growing concerns for refugees. Therefore, after the creation of the League of Nations (1920), the then-President of the International Committee of the Red Cross Gustav Ador, urged the member states of the newly-founded-organization to establish a High Commissioner of Refugees to deal with the problem (Orchard, 2018). However, despite the apparent support from the members of the League, this new project's mandate seemed to be rather limited. The first High Commissioner Nansen tried to introduce some improvements that would allow refugees to acquire legal status at the international level through certificates, the 'Nansen Passports' as they came to be called (Orchard, 2018). Moreover, in 1933, a first international agreement on the status of refugees was arranged<sup>3</sup>, whose Covenant does reference both to the Preamble to the Covenant of the League of Nations, with its main objective of promotion of international cooperation, and to the establishment of the Nansen International Office for Refugees.

Still, the system presented some restrictions and limitations and despite the fact that there have been other attempts and proposals within the League of Nations in the following years to improve the refugee-protection system, they nonetheless met some reluctance on behalf of European countries (Orchard, 2018).

Therefore, at the time World War II started in Europe, there were still no international organizations in place able to effectively offer protection to refugees across the continent (Orchard, 2018). More than 40 million people ended up displaced or refugees as a consequence of the war, numbers way higher than ever seen in the European context, and that is why, following World War II, the modern refugee regime was created through the UN Convention Relating to the Status of Refugees of 1951 (Orchard, 2014).

The Geneva Refugee Convention Relating to the Status of Refugees was adopted on 28 July 1951 at a United Nations Conference and became legally binding on 22 April 1954.

The Convention was conceived as an effort to address the problem of displacement in Europe in the aftermath of WWII, "by providing a legal status – and thus some certainty – for the many thousands of refugees still displaced six years after the conflict" (McAdam, 2017: 2).

---

<sup>3</sup> League of Nations, *Convention Relating to the International Status of Refugees*, 28 October 1933, League of Nations, Treaty Series Vol. CLIX No. 3663

One of the most important clauses codified by the Convention is the definition of who a refugee is: Article 1A(2) defines a refugee as a person who, being part of a specific social group, is outside his or her home country and unable or unwilling to return because of a legitimate fear of persecution.

The introduction of this definition has had a major impact on how asylum policies evolved across Europe insofar as it helped states better identify those in need of asylum protection and at the same time it made it clear that the legal responsibility for this protection is placed on the states themselves.

Indeed, in a broader sense, the Convention does not lay out procedures nor provide direct protection to refugees; that is still up to the states. However, it accounts for obligations and principles that the national governments must follow and integrate in their domestic practices and asylum reception systems. In this sense, the cornerstone of the Convention is the principle of non-refoulement, which today is considered to be part of customary international law (Cherubini, 2014). The provisions in Article 33(1) stipulate that states have an obligation not to send refugees back to a country where there is a risk that his or her life or freedom would be threatened. And this definition is therefore applied also in relation to the concept of ‘safe third country’, a concept oftentimes outlined within EU policies relating asylum.

Despite the achievements in terms of refugee protection the Convention contributed to, it was however designed with both geographical and temporal constraints. Indeed, the Convention only applied to situations that occurred before the 1<sup>st</sup> of January 1951 and to those that happened in Europe alone. These limitations were removed with the adoption of the 1967 Protocol Relating to the Status of Refugees, through which in fact the Convention reached a more universal application.

The EU itself is not part of the Convention, because the latter was conceived to be open to states only; nonetheless, all EU member States have signed both the 1951 Refugee Convention and the related 1967 Protocol. This means that, in compliance with the EU law, the EU is also bound to comply. The EU reaffirmed this commitment when it first submitted the idea of a Common European Asylum System at the time of the Tampere Council (1999) and also within its Treaties. Indeed, as said before, Article 78(1) of the TFEU relating to asylum states that EU policy in this field must be in accordance with the 1951 Geneva Convention and its Protocol.



## 1.4 THE INSTITUTIONALIZATION PROCESS

### 1.4.1 Before the Lisbon Treaty

In the years following the adoption of the Geneva Convention, some European states were beginning the process of creating the European Economic Community (EEC) through the Treaty of Rome (1957). However, since the union was based on economic integration and market communitarization, asylum issues were not discussed and were still retained by default as a matter of national borders.

It is only in the early 1990s that cooperation on asylum policies at the EU level gained support as a result of the growing numbers of refugees following the dissolution of the USSR in 1991 and the beginning of the wars in former Yugoslavia. As a consequence, asylum became not just a crucial political topic but also an issue more and more perceived as European-wide and therefore needing EU-level cooperation (Geddes, 2020). An instrument upon which an initial approach was built was the Schengen Agreement (1985) because it was founded on the premise that abolishing internal borders demanded a more coordinated approach on asylum and migration in general and therefore greater attention to the external borders (Cherubini, 2014). Moreover, some EU countries, were starting to see the option of institutionalization of asylum policies as an opportunity to lighten the pressure on their domestic asylum systems and distribute costs and liabilities, especially in terms of national political debate, with the European Union (Zaun, 2018). This was the case for example for Germany, which was already a top recipient country of asylum-seekers, and other European countries considered ‘strong regulators’<sup>4</sup> in matters of asylum reception: according to some scholars, these countries were indeed the ones who promoted the idea of harmonisation of asylum policies. (see e.g.: Zaun, 2018).

In the early 1990s, an initial approach to asylum reception was intended in a restrictive way. The intergovernmental setting of decision-making at the time was dominated by national Interior Ministers who were interested in trying to curb asylum and protect their borders. In this sense, the Schengen Agreement (1985) could be understood as a first approach to asylum

---

<sup>4</sup> ‘Strong regulators’ are defined by their efficient asylum reception systems characterized by functioning institutions, expertise in the matter because of the high numbers of asylum application, and reliable administrations. On the contrary, ‘weak regulators’ lack all these elements mostly due to a lack of refugee arrivals in their countries in the first place (Zaun, 2018).

insofar as it indirectly deals with it as a consequence of the opening of the internal borders between member states. In elaborating the Schengen acquis, negotiators came up with two key instruments, visas and carrier sanctions: the introduction of these policies made it impossible for asylum seekers to enter through a safe path the Schengen territory without having documents, as these policies “forced those fleeing conflict just as other migrants to resort to smugglers if they wanted to reach Europe”. (Guiraudon, 2017: 156).

Asylum cooperation actually made its way firstly within the framework of an ad-hoc group, the Ad-Hoc Group on Migration, established in 1986 by the Council following the Schengen Agreement, with the intent to examine possible common measures to avoid asylum abuse (Cherubini, 2014).

Remarkably, this group's works resulted in the approval of the Convention determining which member state is responsible for assessing asylum claims made on the territory of European Community's states, known as the Dublin Convention (1990). One thing to notice is that while the Schengen Agreement was the result of intergovernmental negotiations between member states outside the framework of the EC, with the Dublin Convention the European Community had a role in the drafting process (Cherubini, 2014). The Dublin Convention eventually entered into force in 1997 and since then it has been revised three times: its latest revised version, Dublin III (2013), represents today one of the most important instruments of asylum reception for the EU.

The notion at the heart of the Dublin Convention is that whichever EU country an asylum seeker first enters in is the one responsible to process the asylum request. Behind this reasoning there were two main objectives. Firstly, it was intended to prevent what is known as asylum-shopping, meaning a situation in which the asylum seeker decides to apply in countries that have better reception conditions; secondly, to avoid the so called phenomenon of ‘refugees in orbit’ that happens when asylum seekers’ requests are hand over from one member state to another without it being clear who is actually competent to examine the application (Bendel and Ripoll Servent, 2017). Indeed, for these same reasons, Dublin also allowed for the exchange of information on applications between member states.

The logic of ‘first country of entry’ at the core of the Dublin system made it necessary to try and find some kind of harmonization between the asylum reception systems of member states so that asylum seekers would have equal chances and reception standards regardless of where the applications were lodged. Institutionally speaking, that happened with the Maastricht Treaty, entered into force in 1993. The years at the beginning of the 1990s were precisely characterized by an increase in asylum claims as a direct consequence of the political and

military turmoil in Eastern Europe with the fall of the USSR and the beginning of the wars in former Yugoslavia.

Art. K.1(1) of the Maastricht Treaty, under Title VI dedicated to the field of Justice and Home Affairs, officially declared the area of asylum policy as a matter of common interest for the European Community. The main aim stated is the one of coordination between the member states in the matters listed under the section, through the exchange of information and shared actions. The Treaty introduced the three-pillar structure for the functioning and governing of the EU. While the policy areas falling under the first pillar, mainly economic and commercial issues, followed a more integrated and supranational decision-making process, asylum policy was incorporated in the third pillar, governed by intergovernmentalism. Therefore, despite asylum policy was to be community-regulated as stated in the Treaty objectives itself, cooperation in the field retained its intergovernmental nature, giving member states' national governments complete control over policy outputs. In the Treaty it is stated that the European Commission "shall be fully associated with the work in [these] areas" (Article K.4(2)) and that it had the right of initiative to the Council (Article K.3(2)). And the European Parliament as well would be simply informed and consulted (Article K.6). Still, any kind of initiative had to be unanimously approved by the Council, meaning that approaches to matters of asylum were in line with the prevailing preferences of the Interior Ministers of member states at the time.

Another thing to notice is that Article K.2(1) of the Treaty states that "the matters referred to in Article K.1", therefore asylum as well, "shall be dealt with in compliance with [...] the Convention relating to the Status of Refugees of 28 July 1951", namely the Geneva Convention discussed above.

Some scholars observed that, because of the Maastricht Treaty's institutional architecture with its predominance of intergovernmentalism, this resulted in national governments favouring from the use of the EU policy-making venue as an alternative to their domestic ones (Bendel and Ripoll Servent. 2017). This phenomenon was called 'venue-shopping' and analysed by Guiraudon (2000): it was premised on the idea that member states trying to carry on more restrictive migration and asylum policies found it easier to do that within the EU policy framework, circumventing in this way any form of political criticism on the domestic level. A positive outcome also resulted for the 'strong-regulators' countries because with the provisions provided in the Treaty, all the other member states upgraded asylum policies to their standards (Zaun, 2017).

Most of the measures taken within the framework put in place by the Maastricht Treaty were rather limited insofar as they mainly made up for recommendations and resolutions (Thym and

Hailbronner, 2016). Still, first steps were made towards finding a harmonization to divergent national practices. In this sense, if until that moment efforts in the asylum policy field had been rather moderate, the Treaty of Amsterdam (1999) a few years later was a fundamental next step in that direction.

The Treaty of Amsterdam was signed in 1997 and entered into force in 1999 and marked a further step for the supranationalization of EU asylum policies. It brought a major institutional shift in the policy- and decision-making of asylum policy, probably as a consequence of the frequent stalemates happening within the Council under the Maastricht regime (Bendell and Ripoll Servent, 2017). Indeed, the Amsterdam Treaty successfully moved asylum policy competencies from the third pillar to the first one, meaning a shift from intergovernmentalism to communitarization in an attempt to revise the weaknesses showed by the intergovernmental setting. For the first time the Treaty introduced the concept of what would later become the Area of Freedom, Security and Justice (AFSJ), succeeding the Justice and Home Affairs pillar created by the Maastricht Treaty and therefore including also matters of asylum. In this sense, it is claimed that the objective of the Treaty of Amsterdam is precisely the one of progressively developing an area of freedom, security and justice within the EU. Moreover, the Treaty officially transferred the Schengen Agreement into EU law, making it necessary for the member states to reach the aforementioned objective.

In practice however, member states, still partly reluctant to give up their control, introduced a transitional period of five years. This period was intended as a way to give institutions enough time for the adoption of measures in order for the EU asylum system to work more efficiently and in a more harmonized way. This also gave member states the power to decide the first steps and measures in that direction and set out the foundations upon which the future EU asylum system would develop. More precisely, Article 73k(1) states that the Council, during these five years, had to adopt several measures, namely mechanisms and criteria for determining which member state is responsible for asylum applications as well as minimum standards for the reception of asylum seekers and for the procedures in place in member states for granting or withdrawing refugee status. Moreover, Article 73k(2) called also for the introduction of measures to promote “a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons”, following the notion of burden-sharing between member states.

During the five years of transition period a particular method for governance applied: decisions were still made within the intergovernmental setting of the Council through unanimous vote,

the Parliament had only a consultant role and the Commission had to share the role of agenda-setting with the Council (Article 73o(1)). Therefore, it was not until 2005 that asylum policy came to be decided under qualified majority voting in the Council<sup>5</sup> and in co-decision with the European Parliament as well, and that the European Commission acquired the sole right of initiative (Article 73o(2)).

In October 1999, a Council meeting was organized in Tampere to discuss matters falling in the area of the previously JHA pillar. The Tampere programme was the first of many multi-annual working programmes set up to define the policy direction of the EU for the field of justice and home affairs (Bendel and Ripoll Servent, 2017). As a matter of fact, the conclusions adopted during this Tampere Council were aimed at supporting the implementation of the measures envisaged in the Treaty of Amsterdam under the AFSJ. The conclusions reached at Tampere could be considered also as a response to the refugee crisis that followed the war in Kosovo in the years 1998-1999 (Lavenex, 2002). Specifically for asylum, the Tampere Council marked the first time member states expressed their intention and commitment to build a common system on asylum issues as the Treaty of Amsterdam merely expected for the adoption of minimum standards (Kaunert and Léonard, 2012b). Indeed, the objective was to create a harmonized and efficient asylum system for the EU, both on the short and long term, through the introduction of policy instruments that still today are at the core of the EU asylum policy framework. The Tampere conclusions foresaw the introduction of short term measures provided that “in the long term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union”<sup>6</sup>. This led to the establishment of the Common European Asylum System (CEAS).

During this phase, the European Commission had been quite upfront with its proposals: following up on the Tampere programme, it proposed a number of directives and regulations that would serve as the key elements of the CEAS. These main legislative texts sought to find harmonization on issues of asylum reception and protection across the EU, like the Qualification Directive (2003/9/EC), the Reception Conditions Directive (2005/85/EC), and the Asylum Procedures Directive (2004/83/EC), which determined common criteria and standards respectively for the definition of who a refugee is, for the reception of those claiming asylum, and for the procedures for examining, granting, and withdrawing of the refugee status. Another directive, the Temporary Protection Directive (2001/55/EC) established mechanisms for

---

<sup>5</sup> This means to be approved a decision must reach 55% of member states favourable, representing at least 65% of the total EU population

<sup>6</sup> European Council, *Presidency Conclusions of the Tampere European Council*, 15-16 October 1999

temporary assistance in case of a large and unexpected influx of refugees seeking asylum in the EU, even though this directive has never been activated (Bendel and Ripoll Servent, 2017). In addition to this, another stepstone was the introduction into EU legislation of the Dublin Convention, which was revised and replaced by Dublin II Regulation (No 343/2003), whose approach however did not change compared to the first version. To complete the Dublin System and help the implementation of Dublin II, the EURODAC Regulation (No 2725/2000) was envisaged for the creation of a new fingerprint database for asylum seekers arriving in the EU to share the information on a European scale and prevent asylum-shopping.

All these instruments and measures represent a fundamental step in the institutionalization process of the field of asylum policy and its harmonization, even though the system was far from being considered truly communitarized.

The instruments introduced after Tampere were liberal insofar as they provided for a liberalization of asylum policies by raising the standards of asylum reception in many member states (see e.g.: Kaunert and Léonard, 2012a); however, at the same time, they maintained those same standards in those countries that already had more advanced reception systems. Indeed, despite the fact that in the Tampere Conclusions member states expressed their full interest, commitment and necessity to communitarize asylum policies, they only introduced minimum standards and stopped short of moving forward with policy harmonization.

The terrorist attacks of 9/11 2001 and in Madrid in 2004 marked a shift in the EU asylum policy-making and a return to a more security-oriented approach. The Hague Programme (2004) was adopted in the aftermath of such events in a political context of increasing security concerns. That is why it presented a plan way less ambitious and with more restricted proposals compared to the one set up in Tampere. However, the Hague Programme underlined still the EU's ambition to move beyond minimum standards in developing the CEAS. Moreover, in this occasion, the European Council called the European Commission to submit its proposals for a new phase of the CEAS: "The Commission is invited to conclude the evaluation of first-phase legal instruments in 2007 and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before the end of 2010."<sup>7</sup> For these reasons we will have to wait the Lisbon Treaty (2009) for further institutional advancements.

---

<sup>7</sup> Council of the European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in The European Union*, OJ C 53/04, 3 March 2005

### 1.4.2 Post-Lisbon Treaty

If until then asylum policy-making had been based on both intergovernmentalism and supranationalism, the Lisbon Treaty (2009) represents a fundamental move in the direction of further supranationalization, strengthening the EU supranational competences in matters of asylum policies.

There is no doubt that the entry into force of the Treaty had a significant impact on the development of EU asylum policies. In this sense, the Treaty of Lisbon, for the part regarding asylum, was intended precisely to reduce disparities between member states in terms of both legislative design and administrative practice (Thym and Hailbronner, 2016). And indeed, Article 3(2) provisions clearly state that asylum and all AFSJ matters represent a key objective for the EU, in second place only to the promotion of peace and the well-being of EU citizens.

One of the most important changes that the Treaty brought was the removal of the third-pillar structure, and asylum issues, together with all the other areas falling under JHA, were now under the normal 'ordinary' legislative procedure. This meant that the Commission maintained its right of sole initiative while the European Parliament assumed the role of co-decision together with the Council under qualified majority voting. In addition, the Court of Justice of the EU entered in the picture as well, acquiring normal competences on matters of asylum. More precisely, the Court formerly had preliminary jurisdiction on limited cases, while now with the Lisbon Treaty, that competence has been extended to all the AFSJ area in relation to both primary and secondary law (Cherubini, 2014). This change of the decision-making procedure introduced by the Lisbon Treaty, marking a shift from consultation to co-decision of the European Parliament in particular, has led to the presence of new veto players into the legislative process (Trauner and Ripoll Servent, 2016). Some scholars have analysed the influence that this institutional change had on the integration processes of asylum policy, concluding that it did not result in a significant policy change (Trauner and Ripoll Servent, 2016). Moreover, some competencies in the field of asylum remains decentralized and under the control of national governments. That is the case for example for coast and border control guards, who remain under the jurisdiction of national authorities. This implies that, even though in theory a certain supranationalization of competencies of asylum policies has been achieved through the Lisbon Treaty, many aspects falling within this policy field continue to retain their intergovernmentalism.

However, there is no doubt that despite this decentralization of certain aspects, the new institutional arrangements, by strengthening the role of EU supranational institutions on asylum

matters, especially the Commission, represents a significant step in the integration of asylum policies at the EU level (Kaunert and Léonard, 2012b). Therefore, there is a situation in which the actors involved in the policy- and decision-making processes balance each other out: on one side, both the European Parliament and the CJEU could now influence the power play between the different EU institutions and shape the development of this policy area; on the other side, the Council still remains a primary actor and, according to Article 68 TFEU, has the role of defining “the strategic guidelines for legislative and operational planning within the area of freedom, security and justice”.

Another important step was making the Charter of Fundamental Rights of the EU, whose Article 18 deals with asylum, legally binding for all the member states and placing it at the same legal level as the Treaties (Article 6(1) TEU). The Charter was drafted in 2000 by the European Parliament, the Commission and the Council; however, it did not acquire full legal effects until the entry into force of the Lisbon Treaty, which basically enshrined all the wide range of fundamental rights present in the Charter into EU primary law. In addition, Article 6(2) affirms the intention of the EU to accede the European Convention on Human Rights, which is an international convention signed by all member states of the Council of Europe, therefore by all EU member states as well, to promote the protection of human rights in the European continent.

In addition to this and to the change in the institutional arrangements on the asylum policy- and decision-making side, the Treaty of Lisbon also granted new competences to the EU through Article 78 of the TFEU. As made it clear earlier, this probably represents the most significant contribution of the Lisbon Treaty to the integration process of asylum policies, because it does call for common standards on asylum protection and not like before, with the Treaty of Amsterdam, when the EU had only the right to legislate on minimum standards. In order to accomplish that, Article 80 TFEU calls for the principles of solidarity and responsibility-sharing among member states in EU asylum and migration policies.

To put into practice these articles’ provisions, already in 2007 the Commission presented a Green Paper (COM/2007/301) to start consultations on the future of the EU asylum system and launch the second phase of the CEAS (Kaunert and Léonard, 2012b). The stated goal for this second phase was “to achieve both a higher common standard of protection and greater equality in protection across the EU and to ensure a higher degree of solidarity between EU Member



States.”<sup>8</sup>. The result was the issuing of a Policy Plan on Asylum (COM/2008/360), which “building on the existing and future legal framework, [...] defines a road-map for the coming years and lists the measures that the Commission intends to propose in order to complete the second phase of the CEAS”.

Then, the Stockholm Programme in 2010, in replacement to the Hague Programme, laid out the priorities of the EU on asylum matters in the years between 2010-2014. As said before and as it is stated again in the Stockholm Programme, in accordance with the Lisbon Treaty, the core of the policies of the CEAS had now shifted away from minimum standards and towards finding a common and uniform approach to asylum seekers requests and their protection. In this sense, the Commission proposed to recast the main asylum policy instruments previously introduced after the Tampere Council; therefore, the Recast Directives on Reception Conditions, Asylum Qualification and Asylum Procedures were adopted, together with a Recast Dublin Regulation and EURODAC Regulation. All these versions were further updated between 2011 and 2013 and became part of an Asylum Package. The recast of all these measures was an attempt to address the shortcomings uncovered during the first phase of the CEAS, which showed the uneven level of implementation of asylum policies across member states. Among the other proposals, in the action plan the Commission picked on an idea set forth in the Hague Programme and created an office in charge of coordinating and sharing information on asylum within the EU. Hence, in 2009 the EU agreed to establish the European Asylum Support Office (EASO). Then, in 2011 the launch of the Global Approach to Migration and Mobility (COM/2011/743) opened the door also for the external dimension of the CEAS.

The year 2014 marked the end of the period set up by the Stockholm Programme; after that, in 2015, a refugee crisis hit Europe and the integration project of asylum policies was faced with a stalemate as the emergency situation of those years has put into a lot of pressure the EU asylum system as a whole.

## 1.5 CONCLUSIONS

This chapter analysed the institutional framework of the EU asylum policy field and its institutionalization process by highlighting the important steps made in the direction of further

---

<sup>8</sup> European Commission, *Commission Green Paper on the Future Common European Asylum System*. COM/2007/301 final. 6 June 2007

supranationalization of asylum policies and the policy- and decision-making dynamics that contributed to it. The final aim was to assess the current integration level of asylum policies at the EU level.

The first paragraph clarified the legal basis of the EU asylum policy area and the current legislative instruments that form the Common European Asylum System. This was done firstly through an analysis of the provisions concerning asylum enclosed within the Treaty of Lisbon, which constitutes primary legislation. Article 78 TFEU in particular stands out because it outlines the common measures to adopt for a common asylum system. Among the instruments part of the CEAS and addressed in this paragraph there are the three main directives - the Reception Conditions Directive, the Qualification Directive, and the Asylum Procedures Directive -; the Dublin III Regulation, whose concept of first-country-of-entry is at the base of the asylum reception system in the EU; the EURODAC Regulation, which supports the implementation of Dublin III through a database of fingerprints of asylum seekers entering Europe; and finally the European Union Agency for Asylum, a specialized agency supporting member states in applying the EU asylum acquis.

The following section of this chapter, before starting on the EU institutionalization of asylum policies, explained the international context within which cooperation on asylum matters have arisen. Indeed, throughout the course of history, asylum protection has been a concept strictly associated with the European context. Even before the end of World War II, which exposed the problem of refugees across the European continent and therefore the consequent need for an international system of refugee protection, there were already examples of some form of refugee policies in some European countries. Then, the Geneva Convention on the Status of Refugees was signed in 1951 and since then, it has represented the normative foundation for the development of asylum policies.

The third paragraph concerned precisely the institutionalization process and analysed in depth the steps and efforts made at EU level to try to reach a harmonization of asylum policies among member states. There is a phase before and after the Lisbon Treaty, as the latter has represented an important point in the direction of harmonization. At first, the fundamental goals and instruments of EU asylum, and also border control and immigration measures, were formulated in the Schengen Agreement and the Dublin Convention, signed respectively in 1985 and 1990 and entered into force few years later. Further steps were then taken through treaty-making, first the Maastricht and then the Amsterdam Treaty, which introduced minimum standards of asylum protection across the EU. In the meantime, the Tampere Council in 1999 represented a fundamental mark in EU asylum policy-making because that is when the Common European

Asylum System, the framework upon which EU asylum policies rest, was conceived, with a first phase of the CEAS (1999-2005) focused on laying the foundation of today's asylum policies. The Lisbon Treaty finally, marked the shift for asylum policy- and decision- making from basic standards to building a common system with a uniform status and uniform processes for the whole Union and launched the second phase of the CEAS (2008-2013), during which all the legislative instruments previously introduced were upgraded, with the aim of reaching a full harmonization.

The analysis in this chapter revealed that there had been many improvements in the integration process of EU asylum policies, and it was evident that the European Commission has played a part in pushing towards that end. Yet standards remained uneven and too varied across the member states. This meant that the long-term goal of achieving full integration within the CEAS was far from being reached. Therefore, when in the years following the end of the second phase of the CEAS the situation in the Mediterranean was starting to deteriorate in terms of the increasing numbers of arrivals of asylum seekers on EU Southern shores, the EU asylum reception system was not yet fully prepared to face the crisis that was coming.

## CHAPTER 2

### THE 2015 REFUGEE CRISIS

#### 2.1 INTRODUCTION

When tackling EU asylum policies and their integration process, one cannot elude itself to analyze the refugee crisis that broke out in 2015, which called into question the CEAS as a whole and the achievements hitherto obtained at the EU level in this policy area. Moreover, among the many crises that hit the EU in recent years, the refugee crisis is also undoubtedly one of the events that is most remembered. This is also due to the fact that, still today, migration and asylum continue to be hot topics addressed within EU institutions and in national public debates alike.

A situation of perceived crisis began already in 2014, then reached its peak in late 2015 and the emergency continued for almost all 2016. The numbers of asylum seekers arriving in Europe rose exponentially and put high pressure on the asylum systems of both national governments and EU institutions. In reality the crisis situation was not as unexpected as it could be perceived. Indeed, already before its peak, the EU had been monitoring arrivals of asylum seekers on its borders and registering an increase. Moreover, there had already been many incidents involving asylum seekers and migrants on the southern shores of the Mediterranean or off the coast of the EU in the years prior. The topic most discussed in the mainstream media during the crisis, that is also one of the main criticisms reserved to the EU management of the situation, was the humanitarian aspect of the refugee crisis and the protection of the migrants' human rights. Indeed, the many fatalities of thousands of asylum seekers on EU external borders and in the Mediterranean, together with the presumed poor response to the crisis by EU member states and institutions, have raised doubts on the important role the EU plays as a promoter of human rights. Moreover, the refugee crisis has also called into question the overall EU project of reaching further integration in the field of asylum policies.

In this chapter, the first paragraph inspects the context in which the refugee crisis arose. It serves as an explicatory analysis of the background of the crisis and the modalities in which it unfolded. Moreover, the exogenous facts that have contributed to this high influx of asylum seekers are addressed. Conflicts and the political situation in parts of the MENA region have certainly played a part, especially the war in Syria which is responsible for the displacement of

millions of people. To add up to this, also the border control measures that member states have adopted at the external borders of the EU during the years have influenced the journeys of migrants towards Europe. The interrelation between all these factors have led to an emergency situation that made necessary a quick intervention by the EU. The second paragraph addresses precisely the EU response to the crisis in terms of measures adopted and of the political debate that arose. The European Commission proposed a series of measures in support of the most hit member states, like Italy and Greece, with the aim of easing the pressure on these same countries and of trying to find a solution to the ever-growing number of asylum seekers' arrivals in Europe. The discussion on these topics at the EU level have led to a strong polarization between member states. The main subject of dispute concerned the redistribution of asylum seekers across the EU, on which some Central European countries have voted against. Finally, the last section of the chapter accounts for a discussion on the efficiency of the response of the EU and on the aftermath of the crisis in terms of policy outcome. It can be argued as a conclusion that the EU has failed to take advantage of this crisis situation to push for further integration in the field of asylum policies. However, it is also true that the European Commission has played a crucial role, not only during the crisis in its agenda-setting role, but also in the aftermath as promoter of proposals to reform the EU asylum system.

## 2.2 THE CONTEXT OF THE CRISIS

In 2015, Europe experienced such high levels of refugees influx that the situation quickly escalated and soon became to be addressed as a full-fledged crisis. Numbers of refugees arriving on European borders reached a record high during those months, sparking a heated political debate in all member states and within EU institutions.

In 2015, EU member states received more than twice the number of applications recorded in 2014, arriving to a total of 1 349 638 asylum applications<sup>9</sup>. The main country of origin of asylum seekers was Syria, with 27% of Syrians applying to refugee status, followed by the Western Balkans countries (15%), Afghanistan (14%) and Iraq (9%). Since the great majority of asylum seekers entering Europe arrived from the Middle East, they did so by boat across the Aegean Sea from Turkey to Greece. Also taking into consideration the fact that Turkey installed a

---

<sup>9</sup> European Union Agency for Asylum. *Latest Asylum Trends – 2015 overview*. Available at: <https://euaa.europa.eu/sites/default/files/public/LatestAsylumTrends20151.pdf>

border fence in 2012 so that its land borders were blocked for migrants, the Eastern Mediterranean migratory route represented the most used path towards Europe during the peak of the refugee crisis as it was also the shortest one. This was in contrast to the previous years when the majority of refugees were arriving in Europe through the Central Mediterranean, landing mostly in Italy from North Africa. As a matter of fact, up until the first half of 2015, the southern shores of Italy had represented the primary point of entry for asylum seekers and the migrants using the Central Mediterranean route arrived up to 170 000 in 2014, compared to a drop in the following year. By June of 2015, Greece had surpassed Italy in terms of arrivals of asylum seekers.

The Central Mediterranean route is considered to be the most dangerous path towards Europe as the journey from North Africa to Italy (and other times Malta as well) by sea is longer and therefore riskier. Indeed, despite in 2015, as said before, the most used path was across the Aegean Sea, the majority of shipwrecks and casualties to asylum seekers attempting to arrive in Europe happened on the Central Mediterranean route. According to data by the IOM on dead and missing migrants in the Mediterranean, in 2015 there were 3 149 missing migrants in the Central Mediterranean compared to 804 in the Eastern Mediterranean<sup>10</sup>.

The most significant incident, which caused the highest death toll by a shipwreck during the refugee crisis, happened the 19<sup>th</sup> of April 2015 when 700 migrants lost their lives in Libyan waters trying to arrive on the island of Lampedusa, Italy's closest point with North Africa. There was also the particular case of a Kurdish three-year-old child, Alan Kurdi, found dead on the coasts of Turkey in September 2015 while trying to cross the sea to arrive in Greece that, together with other shipwrecks that happened earlier that year, sparked a big wave of outcry by public figures, NGOs and other actors.

Before 2015, media attention with regard to EU immigration and asylum policies had been just occasional: there had already been incidents at the borders of the EU, but the coverage lacked public debate. However, despite the absence of a public debate on the issue, already before 2015 it was clear that the trend of growing numbers of arrivals of refugees in Europe would not have stopped. Indeed, according to Eurostat, in 2014 EU member states received around

---

<sup>10</sup> International Organization for Migration. *Missing migrant project data portal*. Available at: [https://missingmigrants.iom.int/region/mediterranean?region\\_incident=All&route=3891&year%5B%5D=2516&month=All&incident\\_date%5Bmin%5D=&incident\\_date%5Bmax%5D=](https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3891&year%5B%5D=2516&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=)

600.000 asylum applications, only for this number to more than double the year after<sup>11</sup>. At the time this was the highest number since 1992 in the wake of the Yugoslavian wars.

The reasons why in 2015 Europe recorded such high numbers of arrivals are several; still, the worsening of the security situation in several of the primary countries of origin of asylum seekers definitely represents the prevailing driver. In 2010 Europe had already begun to record an increase in asylum seekers as a result of the revolts happening in many parts of North Africa and the Middle East, in particular the wars in Syria and Afghanistan, which all contributed to a higher refugee flow towards the coasts of Europe. At first, many of the people fleeing their countries, sought refuge in other relatively safe neighbour countries like Turkey and Lebanon, however still living under very poor circumstances. Since it became clear that the wars in their home countries would not have ended any time soon, many of these asylum seekers decided to find a more permanent settlement elsewhere - and hopefully better living conditions - moving therefore towards Europe. Moreover, at the end of 2014, the UN warned about the worsening of the conditions of Syrian refugees in Syria's neighbouring countries due to a crisis with the funding of the UN's World Food Programme<sup>12</sup>. For this reason, as the living conditions within refugee camps quickly deteriorated, many people decided to migrate again. In addition to this, Lebanon, Jordan and Egypt, despite being among the countries that accepted more Syrian refugees since the beginning of the 2011 war in Syria, decided at the end of 2014 to introduce stricter asylum policies, reinstating border controls and limiting the numbers of arrivals (Zaragoza-Cristiani, 2015), contributing to the secondary movement of asylum seekers towards Europe.

On one hand, all these exogenous factors added up to and contributed to a mass influx of asylum seekers in Europe. On another hand, however, also border controls measures introduced by EU member states in the years prior to the crisis have led to its worsening. More specifically, decisions by some EU member states have indirectly prompted asylum seekers to concentrate in big numbers in Turkey, in turn making the maritime route between Turkey and Greece their only escape option (Zaragoza-Cristiani, 2015). An example is the fence Greece built back in 2012 on the land border with Turkey which is 10.5 km long and 4 m tall. This fence was erected on the land border that is not naturally separated with Turkey by the Evros river, that acts in a way as a natural defence barrier, forcing migrants to go for the Eastern Mediterranean route in

---

<sup>11</sup> Eurostat. *Asylum Applicants and First Instance Decisions on Asylum Applications: 2014*. March 2015. Available at: <http://ec.europa.eu/eurostat/documents/4168041/6742650/KS-QA-15-003-EN-N.pdf/b7786ec9-1ad6-4720-8a1d-430fcfc55018>

<sup>12</sup> Jones, S., 2015. 1.7m Syrian refugees face food crisis as UN funds dry up. *The Guardian*. 1 December 2014.

order to reach the Greek coasts and Europe. This decision to erect a wall was copied by Bulgaria as well, since the closing of the Turkish-Greek border initially pushed migrants to opt for Bulgaria. So, in order to detect illegal crossings of migrants, at the beginning of 2014 the Bulgarian government started to build a 30 km long and 3 m tall fence along its border with Turkey, which in 2015 and then 2016 has been extended to secure the whole Bulgarian-Turkish border. To add up to this, several control operations were introduced to patrol the hot spots of border crossings for migrants both through land and sea. For example, in 2013 there was the Greek 'Operation Aspida' which deployed officers at the land border with Turkey, redirecting the flux of asylum seekers on the Eastern Mediterranean route. Some other operations were active both by single member states initiatives or on an EU-wide scale through Frontex, like the 'Joint Operation Poseidon' that started already in 2006 and expanded again in 2011 and that oversees the Aegean Sea in its borders with Turkey as well as the land border on the Evros river in Greece. Another example is the 'Operation Triton' in the Central Mediterranean, which started in 2014 and was conducted by Frontex under Italian control and with the voluntary contribution of other member states. Moreover, this operation was launched after another operation started on the single initiative of the Italian government, Operation Mare Nostrum, was ended as it had begun to be too costly to fund. Frontex operations were active also during and in the aftermath of the refugee crisis with a mission to tackle smugglers and illegal migrants and in this way discourage the movement of people across EU borders; this will be addressed further in the next sections.

With the events of 2015, there was ultimately a great coverage of persons fleeing conflict, including children, risking their lives to arrive in Europe and request asylum. At that point, all eyes were already on the EU regulations and agencies involved in border control and asylum policies, blamed as the responsible for the numerous deaths occurring in the Mediterranean and Aegean Sea.

### 2.3 POLITICAL DEBATE AND POLICY RESPONSE

When in the spring of 2015 the influx of asylum seekers arriving in Europe increased steeply there was a deep political polarization not only at member states' national levels but also within EU institutions because views on how to deal with this rapid growth in arrivals differed greatly. Moreover, the crisis didn't affect all EU countries in the same way. On the contrary, there were



disparities among member states based on different grounds and refugees were not distributed equally throughout Europe, contributing to the formation of different perceptions of the severity of the ongoing crisis.

The most hit countries by the refugee crisis were Italy and Greece, firstly because they were the main hot spots for the entry of asylum seekers in Europe and therefore, following the Dublin Regulation, they had the burden of registering and processing high numbers of asylum applications never seen before and at the same time being unable to do so because of their relatively weak national asylum systems. It is also true however, that the country that received the most asylum applications in 2015 has been Germany, with more than 441 800 first time applicants, followed by Hungary and Sweden<sup>13</sup>. The dispute therefore revolved around three main different visions: first, countries at the southern borders like Greece and Italy, that asked for help and solidarity at the EU level to face the crisis as they found themselves unprepared to efficiently deal with such a high influx of asylum seekers; the Visegrád group, composed of four central EU countries, Czech Republic, Hungary, Slovakia and Poland, which have been more sceptical towards a pro-refugee EU policy agenda and opposed to any form of relocation of refugees; finally, countries like Germany and Austria which have always been top-recipient countries of asylum seekers, therefore with working and efficient asylum systems, and that during the crisis called for burden-sharing measures and solidarity at the EU level (Geddes, 2020). The growing influence of populist movements and ideas in some member states as well as the right-wing and populist parties already in government in the countries of the Visegrad group, also led to a further politicization and polarization of the question and triggered sharp debates within EU institutions (Niemann and Zaun, 2018).

In particular, many recognized that Germany, and the figure of its then-Chancellor Angela Merkel, had played a particular role in advocating for a coordinated effort in dealing with the refugee crisis at a supranational level (see i.e.: Zaun and Ripoll Servent, 2021). Famous were her words in the summer of 2015 when she said ‘wir schaffen das’ (we will make it), in an effort to inspire a sense of responsibility and solidarity towards asylum seekers across the EU. However, Germany ultimately failed to convince the other central European states to follow the approach it proposed. Instead, they argued that the German Chancellor was to blame for the situation because it made possible for asylum seekers to enter Germany and apply for refugee status, encouraging in this way others to do so (Lavenex, 2018). What happened was that in

---

<sup>13</sup> Eurostat, 2016. *Record number of over 1.2 million first time asylum seekers registered in 2015*, 4 March 2016. Available at: <https://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6>

September 2015 the Hungarian government decided to close its Schengen borders and justified this action with the respect of the Dublin Regulation, since many asylum seekers that had arrived in Hungary wanted to cross the borders and reach Germany or Austria. In order to avoid a humanitarian crisis at the border with Hungary, where many asylum refugees were stranded, Germany and Austria decided to allow Syrian refugees to cross the border and claim asylum in their countries, in effect suspending the Dublin rules for Syrian transfers. As a consequence, also Greece and Italy, overwhelmed by such high numbers of asylum seekers, adopted the decision to let migrants pass through without registering all of them. The decision by the German government to temporarily suspend Dublin and allow Syrians to reach German territory was actually welcomed with support by the EU, in hope that other northern countries would follow its example. However, a few weeks later, the Germany was forced to partly reverse its decision and to reinstate border controls with Austria, as the pressure of a huge wave of arrivals was too strong. This triggered a reaction, prompting other EU member states, among which Austria, France, Denmark, and Sweden, to implement internal border controls. Seeing the failure to find a coordination on borders management both internal and external, the following month Hungarian Prime Minister Orbán also adopted the drastic decision to build a fence with Croatia and Serbia to redirect the flows of migrants, blocking in this way the Balkan route and leaving refugees stranded in Greece (Trauner, 2016). For all these reasons, instead of using the terms ‘refugee crisis’, some scholars prefer to talk about a ‘Schengen crisis’, as the Schengen system, which constitutes a basic pillar of the EU integration project as whole, together with the Dublin system at the core of EU asylum policies, had failed (see i.e.: Börzel and Risse, 2018).

Together with these border control measures taken at the national level of some member states to face the refugee crisis, there were also efforts made at the EU and supranational level, like the many proposals that the European Commission put through during the peak of the crisis (see i.e.: Niemann and Zaun, 2018). However, the fault lines created by the political debate in place made these efforts rather disputed and with an unclear outcome.

Already in May 2015, the Commission proposed a European Agenda on Migration (COM/2015/240 final), outlining the efforts and immediate measures needed to face the crisis and to improve migration management in the following years. The Agenda also stressed the importance of responsibility-sharing among member states and the need for a coherent response to the situation at the EU borders. The immediate actions proposed fall under six main areas:

- (1) Saving lives at sea by tripling the budget of for the Joint Operations Triton and Poseidon by Frontex in order to expand the capacity and geographical scope of the EU presence in the Mediterranean.
- (2) Targeting criminal smuggling networks through the exchange of information and the possibility to initiate operations under the Common Security and Defence Policy.
- (3) Responding to high-volumes of arrivals within the EU through a relocation scheme of asylum seekers across the EU.
- (4) A common approach to granting protection to displaced persons in need of protection through a resettlement mechanism for people in need of international protection also outside of EU soil.
- (5) Working in partnership with third countries to tackle migration upstream.
- (6) Using the EU's tools to help frontline member states by the creation of hotspots on the coasts of Italy and Greece and by mobilising further emergency funding.

To enact these plans the Commission proposed the activation of Article 78(3) TFEU which states that 'In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned'.

As the refugee crisis exposed the need for immediate action to face the humanitarian emergency happening in the Mediterranean and on EU borders, it also made clear that the whole migration and asylum system might not work efficiently enough. Therefore, the Commission's Agenda is based on four pillars which are at the core of the project the President of the Commission Juncker envisaged for the EU in the field of migration and asylum; these are reducing the incentives for irregular migration, border management through the strengthening of the role played by Frontex, a full and coherent implementation of the CEAS, and working on a new policy for legal migration.

Drawing on the European Agenda on Migration, the first package of proposals by the European Commission arrived at the end of May, which was based primarily on measures for resettlement and relocation of 40 000 asylum seekers<sup>14</sup>. A second package of proposals by the Commission was presented in September<sup>15</sup>. This new set of measures as well aimed at relieving the burden

---

<sup>14</sup> European Commission, 2015. *Press Release. European Commission makes progress on Agenda on Migration*, 27 May 2015. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_5039](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5039)

<sup>15</sup> European Commission, 2015. *Press Release. Refugee Crisis: European Commission takes decisive action*, 9 September 2015. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_5596](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5596)

of the crisis on the most affected member states, Italy, Greece, and Hungary by temporarily relocating up to 120 000 asylum seekers to other member states. Moreover, the Commission proposed a common European list of safe countries of origin and outlined the main actions to make return policy more effective.

Notwithstanding considerable opposition from the Visegrád countries on the base of the political polarization explained above, in September the Justice and Home Affairs Council at last decided by qualified majority voting to relocate 160 000 asylum seekers across the EU (European Council, 2015).

All of this was in addition to measures proposed to address the external dimension of the refugee crisis, which comprises of providing assistance to population in countries affected by conflict or supporting political and diplomatic initiatives in those same counties. An example was the EU commitment to find an understanding with Turkey in an attempt to externalize the issue, which led to the EU-Turkish Statement signed in 2016. Apart from the commitment of Turkey to adopt any measure necessary to block illegal migration routes towards Europe, according to the deal the EU was also to send back to Turkey all illegal migrants crossing the border with Greece and for every Syrian returned to Turkey the EU would resettle another Syrian from Turkey to the EU.

Other than these immediate actions put forward by the Commission, among the solutions adopted by the EU to countering the crisis was the strengthening of the role and competencies of EU agencies in the field. Some scholars have indeed addressed the ‘agencification’ of the EU during the refugee crisis (see i.e.: Ripoll Servent, 2017). This can be explained with the fact that the lack of implementation that some member states presented before and during the crisis have highlighted even more how much the use of operational coordination and the potential of Frontex and EASO are important (Bendel and Ripoll Servent, 2017). Both of these agencies were further supranationalized by acquiring independence in terms of monitoring and coordinating powers, meaning that in case a member state was unable to manage border controls or asylum procedures, the agencies may intervene whether or not their intervention is voluntarily requested by the member state in question (Bendel and Ripoll Servent, 2017). Indeed, the reform of the EASO presented by the Commission gave the Agency a new and enhanced mandate under the new name European Union Agency for Asylum (EUAA). But probably the case on point is the creation of the European Border and Coast Guard (EBCG) from Frontex, whose regulation was approved in 2016 (Regulation 2016/1624) and defined as

a ‘milestone in the history of European border management’<sup>16</sup>. In comparison to Frontex, the EBCG benefited from more resources and more independence with regard to member states. This new Agency has indeed the power to perform regular mandatory assessment of the member states’ capacity at border management and in case any shortages are observed and not addressed by the member state, the Council may decide by qualified majority voting to assign border guards to the member state in question. For this reason, some scholars argue that during the refugee crisis the formation of the EBCG may be considered as a step towards reaching more integration at the EU level (see i.e.: Niemann and Speyer, 2018).

## 2.4 THE AFTERMATH OF THE CRISIS: POLICY OUTCOMES

After the peak of the crisis, in 2017 the pressure on the asylum system was much reduced and a shared perception that the emergency of the crisis was in some ways over spread across the EU. During its State of the Union speech (2017) the then-President of the Commission, Jean-Claude Juncker, stated that “We have managed to stem irregular flows of migrants [...]. We have reduced irregular arrivals in the Eastern Mediterranean by 97% thanks our agreement with Turkey. And this summer, we managed to get more control over the Central Mediterranean route with arrivals in August down by 81% compared to the same month last year”. Still, this evident progress has not fully eradicated the roots of the crisis, that are to be found in the system itself, nor the measures adopted have ensured that the conditions for another refugee crisis would not present again.

Much of the research after the refugee crisis has been focusing on analyzing the systemic deficiencies detected within the CEAS during the crisis and on discussing the integration project on asylum policies in its aftermath (see i.e.: Niemann and Zaun, 2018; Scipioni, 2018). One can say that the asylum system in Europe has failed as a consequence of the high pressure of the refugee crisis, meaning that there was obviously a link between the crisis and the increasing of asylum seekers’ arrivals on the EU borders. However, in reality, the rise in the influx of asylum seekers was only a trigger for the crisis and not a direct consequence, as the doubling of asylum applications only revealed the shortcomings and structural weaknesses already present within the asylum system (Niemann and Zaun, 2018). Moreover, Trauner (2016: 317) argues that the

---

<sup>16</sup> European Commission, 2016. *Press Release. Securing Europe’s external borders: Launch of the European Border and Coast Guard Agency*, 6 October 2016. Available at: [http://europa.eu/rapid/press-release\\_IP-16-3281\\_en.pdf](http://europa.eu/rapid/press-release_IP-16-3281_en.pdf)

measures adopted during the crisis “have not challenged the key elements of the EU’s asylum rules as defined in the legal integration process, yet they added a new policy layer aimed [only] at ensuring the sustainability and credibility of the EU asylum regime”.

The measures of redistribution of asylum seekers across the EU adopted during the crisis have not been efficiently implemented. Indeed, according to a report of the European Commission in 2017 (COM/2017/465 final), only 27 7000 had been relocated as of September 2017, meaning that the system envisaged for relocation and resettlement have moved at a very slow pace. This is a problem that can be attributed to both the inefficiency in terms of capacity-building of southern member states and to the reluctance of other member states to cooperate and accept their shares of asylum seekers.

The creation of hotspots in frontline countries, established as a way to ease the pressure on the national asylum systems and speed up asylum applications, has also been recognized as a failure in the aftermath of the crisis. Indeed, the pace at which asylum applications have been processed was still not sufficiently fast and this created the conditions for refugee camps to be overpopulated and for asylum seekers to be stranded there in poor conditions waiting for their applications to be processed.

However, going deeper into these issues, the main weaknesses that the crisis have revealed are the lack of solidarity and responsibility-sharing among member states: these are precisely the main reasons why it can be argued that the EU has failed to reach further harmonization in asylum policies after the crisis (Bendel and Ripoll Servent, 2017). And to add up to this, Guiraudon (2018: 156) argues also that the main reason of the failure of the EU response to the crisis is because it is “difficult to break the monopoly of Justice and Home Affairs over the regulation of asylum and migration at the EU level”.

At the policy level, seen the discussion so far, one can therefore argue that in the immediate aftermath of the crisis no important steps have been made in the field of asylum. In this sense, many scholars agree that there was not a change in this policy field after the refugee crisis as one would have expected after such an event. Moreover, it was evident that the measures that were adopted to face the crisis focused more on securing the external borders, meaning that member states converged more on the idea of securitization of migration flows and on the externalization of the issue through deals with partner countries like Turkey.

It is also true however, that during the crisis the European Commission, in its role of agenda-setting, has been very upfront with its commitment to fostering more integration in the field of asylum. Besides the emergency measures proposed in response to the crisis, since late 2015 the

Commission has also put forward quite ambitious proposals for the establishment of a third phase for the CEAS.

At the heart of this new generation of legislation on asylum there would be a fourth Dublin Regulation (COM/2016/270 final), together with revised versions of the other legislative instruments of the asylum policy field. On May 4, the European Commission presented to the Council and the European Parliament a proposal to reform Dublin III with the aim of finding a solution to the problems exposed by the Dublin system thus far. In the official document of the proposal as well it is acknowledged that “The current Dublin system was not designed to ensure a sustainable sharing of responsibility for applicants across the Union”. The main issues remain the lack of burden- and responsibility-sharing of asylum seekers between the member states and the lack of solidarity and fairness on these same issues. The stated aim of the proposal is therefore to “(1) enhance the system's capacity to determine efficiently and effectively a single Member State responsible for examining the application for international protection [...]; (2) ensure fair sharing of responsibilities between Member States by complementing the current system with a corrective allocation mechanism [...]; (3) discourage abuses and prevent secondary movements of the applicants within the EU [...]”. The last point means that the core of the Dublin system, meaning the first country of entry of the asylum seeker is the one responsible for the processing of their application, remains valid in Dublin IV as well. One of the innovations envisaged by the proposal was instead a ‘corrective allocation mechanism’ in case member states find themselves in a situation of receiving too many asylum applications. More precisely, according to the provisions in question, this corrective allocation would be triggered automatically every time a member state receives more than 150% of the asylum applications calculated on the base of the size of the population and the total GDP of that country.

The response of the member states to all the proposals made by the European Commission to reform the CEAS have been met with serious deadlocks. EU member states themselves, especially the Southern countries and those at the EU borders, have often called into question the Dublin Regulation for its unfairness and over the years have demanded a reform of the system. However, those same countries have been against the proposal of Dublin IV. Part of the reasons are political because of the lack of will of national governments, like in the Visegrad countries or Italy, to reform the system as they put their national interests and political positioning first. However, the main argument against the proposal was the fact that a corrective allocation mechanism would not have changed things in the long run as the pressure on the countries most hit by refugees inflows would be the same.

The Dublin IV was in the end never approved, but the commitment of the Commission towards reaching a higher harmonization in asylum policies, as well as its fast response to the crisis through these proposals, remain evident.

## 2.5 CONCLUSIONS

This chapter examined the refugee crisis that hit Europe in 2015 as a crucial event that intervened in the process of integration undertaken by the EU during the years in the field of asylum policies. Firstly, it is done so by analyzing the context and the factors that have contributed to the rise of arrivals of asylum seekers and to the consequent emergency situation in Europe. The member states at the southern borders have always experienced first-hand migration flows and a certain pressure on their national asylum systems. In particular, the Central Mediterranean route, starting from North Africa and arriving on the shores of Italy, was the most used path used by migrants to arrive in Europe. This shifted in 2015, as the majority of asylum seekers were Syrians, therefore arriving first in Turkey and then entering in Greece through the Eastern Mediterranean route. The exogenous factors that have contributed to the increase in the numbers of asylum arrivals have been addressed and the geopolitical situation in parts of the Middle East, particularly the civil war in Syria, has been revealed as the prevailing factor. However, certain measures and decisions on migration and border control adopted in the years prior by member states have also played a part and influenced the modalities in which the crisis unfolded. For example, the border fence with Turkey built by Greece first and then Bulgaria as well deviated the flux of asylum seekers towards the Aegean Sea, as it was their only option to the enter Greek soil, in this way creating the conditions for shipwrecks to happen and for asylum seekers to be stranded in refugees camps on the Turkey-Greek border.

The crisis has given rise to a political debate at the EU level - addressed in the second section of this chapter - which in turn transformed into a strong polarization. On one side, the most hit countries like Greece and Italy called for solidarity measures between member states to help ease the pressure on their national asylum systems. On the other hand, the Visegrad group, composed of Czech Republic, Hungary, Poland and Slovakia, has been against any form of relocation of asylum seekers across the EU and against form of fair sharing of responsibility between member states. Germany, for its part, tried to play a role in convincing member states to converge on more integrated measures but failed in its endeavor. This paragraph then goes



deeper into the emergency measures proposed by the Commission and then adopted to face the crisis, like the relocation measures and the creation of hotspots in the frontline countries. An analysis of the measures adopted during the crisis is proposed in the last paragraph as well as the policy situation in the aftermath. The commonly accepted argument is that the crisis has only revealed the shortcomings and weaknesses of the CEAS. The Commission proposed a series of reforms of both the Dublin system and of the other instruments of the CEAS. In particular, the proposal for a Dublin IV Regulation, with the proposed innovation of a relocation system in case of emergencies, has been quite a topic of political discussion between member states. However, despite the work done by the European Commission as promoter of deeper integration, the proposals have been met with serious deadlocks by the majority of member states mainly on the base of national political interests. The Commission never stopped to push for common solutions at the EU level to the migration problem, that remains a European challenge, and therefore migration and asylum policies have always remained a policy priority. In this sense, the latest proposal by the European Commission is the New Pact on Migration and Asylum (2020) which aims at overcoming the shortcoming registered thus far by putting in place a more reliable and fair migration management system.

## CHAPTER 3

### THE NEW PACT ON MIGRATION AND ASYLUM

#### 3.1 INTRODUCTION

The New Pact on Migration and Asylum was published by the European Commission in September 2020. The proposal can be inscribed within a framework of continuing efforts made by the Commission for a further harmonization of asylum and migration policies at the EU level. Indeed, this Pact puts forth a multi-year policy agenda on topics and issues that have been at the centre of the political debate on asylum policies and central to the discussion over the European integration project of this policy field.

The aim of this chapter is to critically assess the legislative changes proposed in the new Pact and underline the role played by the Commission in trying to address the shortcomings encountered within the CEAS and to reach further integration in asylum policies.

The first paragraph starts with an overview of the background of the proposal, explaining the process that led to the publication of the Pact. Indeed, as clear from the previous chapter of this thesis as well, the Commission had already acknowledged in particular after the 2015 refugee crisis the need for the EU to reform its asylum system. The objectives of the Pact are stated in this section as well in an attempt at underlying the main elements that comprise this new legislative framework and that establish a comprehensive mechanism and measures to deal with asylum and migration issues. The second paragraph goes deeper into details of the legislative package envisioned by the Pact. More specifically, this section provides for a thorough analysis of the new Asylum Procedure Regulation, Screening Regulation, the Crisis and Force Majeure Regulation and the new Asylum and Migration Management Regulation. These are the main legislative proposals that aim at bringing new changes to the current system. The majority of the novelties proposed, especially in the Asylum Procedure Regulation and the Screening Regulation, are intended for migrants arriving at the EU external borders and for those arriving through search and rescue operations with the aim of alleviating the pressure on the national asylum system of those member states more exposed to high migration flows. In particular the Asylum and Migration Regulation is of most interest because it addresses specifically the issue of responsibility-sharing and solidarity among member states, which represent the main topics of political contention within EU policy-making venues and consequently have been found to

be crucial issues to be addressed in the field of asylum policies. The third paragraph finally provides a reflection on the legislative proposals and on the objectives they aim to achieve. The criticisms found in terms of both procedural and political aspects are also analysed. Since the New Pact on Migration and Asylum has been published quite recently, the literature on the subject is not very wide; however, there is a general convergence among scholars on the idea that the Pact fails to achieve the designated aims and in particular, the measures proposed do not efficiently address the shortcomings previously encountered within the EU asylum system management. Despite this, the chapter overall emphasises on the attempts by the Commission at finding a comprehensive solution to these structural problems.

### 3.2 OBJECTIVES OF THE PACT

In September 2019, the European Commission's President von der Leyen announced that the Commission was in the process of publishing a New Pact on Migration and Asylum that would have defined a comprehensive EU strategy to deal with asylum, migration, and borders control issues. The Pact was then presented on the 23 September 2020, after extensive consultations by the Commission with a whole set of institutional and non-institutional actors.

The general objective of the new Pact is to address the structural and systemic shortcomings identified within the CEAS and the disparities among the asylum reception systems of member states. The final aim is to find a solution to the migration management problem, a solution that is European wide. Indeed, the Commission President has precisely stated that what they are proposing is “a European solution, to rebuild trust between Member States and to restore citizens' confidence in our capacity to manage migration as a Union”<sup>17</sup>.

Since the 2015 refugee crisis the Commission has made a clear priority to reform the asylum system as it acknowledged that the current system no longer works and that in the five years prior member states have been unable to converge on a solution to the many issues detected. In this sense, the new Pact does not intend to completely replace the previous proposals made in the aftermath of the refugee crisis, but rather it develops from them including new instruments necessary to build a common framework encompassing all the policy elements falling under

---

<sup>17</sup> European Commission. *Press Release. A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity.* 23 September 2020. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706)

migration and asylum management. Indeed, the Commission has stated that this new Pact offers a broader and more balanced approach compared to the previous proposals.

The legislative package enclosed within the Pact includes an Asylum Procedure Regulation and EURODAC Regulation, which amend the ones proposed in 2016, a new Screening Regulation, a new Asylum and Migration Management Regulation, and a new Crisis and Force Majeure Regulation. These instruments all aim at establishing a renovated and comprehensive legislative framework on asylum and migration management and at setting out more efficient and faster procedures in the field. Moreover, the Pact also contains three recommendations, on resettlement and complementary pathways, on search and rescue operations by private vessels, and a new migration preparedness and crisis blueprint. The main pillars of this reform are the fostering of better and more efficient procedures, the fair sharing of responsibility and solidarity among member states, partnerships with third countries, and a comprehensive approach that is strategic and reliable for all the EU. As for procedures, the Commission in particular proposes a common process at the borders that consists of a pre-entry screening for all illegal migrants arriving at the EU external borders or who have been disembarked following search and rescue operations. This phase is needed for then channelling these migrants in question through the right procedure, whether be it the asylum border procedure, which provide for a quicker response at the external borders, or the usual asylum procedures. The other point of fair sharing and solidarity is actually a pillar of the EU governance in general. In the case of asylum, member states are obliged to provide solidarity measures to the member state that is facing high migratory pressure and is in a situation of crisis; however, the contributions are flexible and can vary from relocation, to return sponsorship, to capacity-building financial support etc.

The publication of the Pact was accompanied by an annexed roadmap that would help the other EU institutions involved in the legislative process with the adoption of the proposals. According to this roadmap, following the policy line established by New Pact the Commission has later presented, among other things, also an Action Plan on integration and inclusion 2021-2024 (COM/2020/758 final), a Strategy on voluntary return and reintegration (SWD/2021/121 final), a new Strategy towards a fully functioning and resilient Schengen area (COM/2021/277 final), a renewed Action Plan against migrant smuggling 2021-2025 (COM/2021/591 final). The institutional progress on the legislative proposals has been rather slow. During the French Presidency of the Council, member states decided to move towards a negotiation on issues concerning the screening and registration of migrants at the external borders. One of the last updates is in September 2022 when the European Parliament and the Rotating Presidencies of the Council adopted a Joint Roadmap which would coordinate and implement a timeline for the

negotiations on the CEAS reforms and specifically on the legislative package presented within the New Pact on Migration and Asylum before the end of the 2019-2024 legislature.

### 3.3 LEGISLATIVE CONTENT

The main elements enclosed within the new Pact that are of interest are certainly the Regulation proposals and for the purpose of this thesis, this section will be dedicated to the legislative features that concern asylum issues. Among the issues that the EU wanted to address there is the one of mixed migration flows. This refers to migration inflows that are composed of different types of immigrants, some of whom are not people in need of international protection or whose asylum claims would likely not be accepted. To intervene on this problem, one of the measures proposed is a Screening Regulation (COM/2020/612 final). The proposal stipulates that every migrant arriving on the EU external borders or through search and rescue operations and that do not meet the entrance requirements of the Schengen Borders Code, will go through a screening process. The objective is to improve the current procedures present at the EU external borders creating uniform rules among member states for the recognition of migrants who do not fulfil entry requirements and for identifying the right procedures for those migrants. These could be a return procedure or in case of asylum seekers, they could be the normal asylum procedure, the accelerated one, the asylum border procedure, or relocation to another member state. According to Article 4(1), during the time of the screening the applicants is not authorised to enter the EU territory, meaning that the process takes place at the external borders and should take maximum five days (Article 6(1) and 6(3)). In particular, the pre-screening process consists of a series of mandatory elements: Article 6(6) lists first the identification of the applicant; preliminary health and vulnerability checks; registration of biometric data in the appropriate databases; security checks. Moreover, the proposal provides in Article 7 for the establishment of an independent monitoring mechanism that would ensure the respect of fundamental human rights during the screening process and the compliance with the principle of non-refoulement as well. This would apply also in cases of detention of the third-country national according to national laws on the matter. In this sense, the Fundamental Rights Agency would provide assistance and guidance to member states in order to fulfil their obligation to establish this monitoring mechanism.

At the end of the screening process there is the referral to the appropriate procedure to follow. One of them is indeed the asylum border procedure, outlined in the proposed Asylum Procedure Regulation (COM/2020/611 final). Among the legislative measures, this latter is an amendment of a proposal already presented by the Commission in 2016 (COM/2016/467 final) which failed to reach consensus during its decision-making process, together with the other proposals for a reform of the CEAS in the aftermath of the refugee crisis. This new text takes account of the previous proposal and presents new common guidelines and procedures that make the asylum and border procedures simpler and more effective. In particular, the most significant novelty of the 2020 amendment is the fact that an asylum border procedure becomes mandatory for asylum seekers arriving on the EU external borders or through search and rescue operations and in different scenarios - if the applicant has deceived border authorities by providing false information or withholding relevant one, if he/she represents a threat to national security or public order, if the applicant is from a 'safe third country', and if the applicant is from a third country where the percentage of positive asylum decisions is less than 20%. Moreover, under the asylum border procedure, according to Article 41(6), "applicants [...] shall not be authorised to enter the MS's territory". The proposal sets a time frame within which the border procedure must be carried out; according to Article 41(11), this should not exceed the 12 weeks since the time the request has been filed. A return procedure follows in case the application through the border procedure is denied, according to Article 41a which replaces the return border provisions included in the proposal for a recast Return Directive of 2018 (COM/2018/634 final). If the application is rejected, then the proposal grants a period of maximum 15 days for the voluntary return of the applicant. Concerning return procedures, Article 35(a) also requires member states to issue the return decision in the same act or at the same time of the asylum application's rejection decision. This would ensure that return processes are quicker and the whole asylum and return procedures more efficient. Since many asylum seekers arrive through search and rescue operations or by illegally crossing EU external borders, it seems clear that the asylum border procedure is favoured compared to the standard procedures, also because the latter last longer. This means that there is a shift towards a more accelerated way of processing application, which was ultimately the goal of the proposed regulation.

The Pact also includes a Crisis and Force Majeure Regulation (COM/2020/613 final) which applies to situation in which there are mass influx of irregular migrants arriving in Europe up to the point where this would pose a risk to the whole EU migration management system and the CEAS. Indeed, as it is stated in the text of the proposal itself "one of the challenges [...] is the lack of a mechanism to address situations of crisis which could result from a mass influx of

irregular migrants capable of rendering a Member State's asylum or reception system non-functional, and have serious consequences on the functioning of the overall CEAS"<sup>18</sup>. The proposal regards an extension of both the grounds for the use of the asylum border procedures and of their time limits. Indeed, when there is a crisis situation, the asylum border procedure can apply also to migrants coming from countries with an asylum recognition rate of up to 75%. Moreover, another eight weeks are added as extended duration of both the asylum border procedure and the return border procedure. To add up to this, this crisis regulation also allows member states to postpone the applications' registration for international protection for up to four weeks, in contrast to the three working days of the Asylum Procedure Regulation.

Finally, the Pact wants to address first-hand the issue of responsibility sharing and solidarity by introducing an Asylum and Migration Management Regulation (COM/2020/610 final). Because of this, this proposed Regulation is at the heart of the whole reform of the CEAS and of the discussion around the Pact itself. With this proposal the Commission aims at relaunching a reform for the CEAS by abolishing the Dublin III Regulation - therefore also withdrawing the proposed recast of the Regulation of Dublin IV - and replacing it with a common framework that encompasses a comprehensive approach to asylum and migration management. The final objective for the Commission is always that of reaching more integration in the field of asylum policies. The proposal wants to guarantee that migration management follows a European approach and that migration inflows are consistent in time and manageable by member states. To ensure this, a Migration Management Report has to be filed regularly by each member state as a form of control mechanism.

Regarding the issue of responsibility-sharing, the current criteria for determining responsibility are maintained in the proposal, meaning that also the first country of entry concept at the base of the current Dublin system remains. Chapter II of Part III of the Regulation sets out in order all the criteria for determining the member state responsible. One of the novelties was the fact that the proposal makes clear that the first country of entry rules applies to migrants arriving through search and rescue operations as well (Article 21). In order to diminish illegal crossings into the EU, the regulation extends the grounds for entry on the base of the family ties and more specifically, the definition of family members now includes also siblings and family relationships established after leaving the home country and before arriving on EU's territory. The other criteria besides family reunification, include also residence and visa permits,

---

<sup>18</sup> European Commission. *Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*. COM/2020/609 final, 23 September 2020, p. 9.

educational qualifications from a member state's institution, or the interests of minors. These criteria would ensure that there are legal preconditions to apply for asylum in the EU and therefore redistributing in part the burden of processing asylum applications.

As for solidarity among member states, the way to address the issue for the Commission was to make solidarity measures mandatory in times of crisis. As stated previously in this thesis, the non-obligatory nature of solidarity provisions in Dublin III has made it more difficult to tackle the 2015 refugee crisis in a comprehensive way and caused major political controversies and ambiguity among member states. That is why the Asylum and Migration Management Regulation focuses precisely on reforming these aspects and setting clear criteria and mechanisms for the other member states to assist the one under migratory pressure. Indeed, Article 33 of Dublin III envisages a mechanism for early warning, preparedness and crisis management but it is up to the member state "at its own discretion and initiative, [to] draw up a preventive action plan and subsequent revisions thereof". Article 17 of Dublin III as well provides for solidarity between member states through discretionary clauses for the transfer of responsibility but always by voluntary initiative. In this sense, the goal of the Commission was to outline a clear operative framework to adopt in times of crisis in a harmonised way. Part IV of the Regulation is dedicated precisely to the issue of solidarity. Firstly, Article 50(1) states that "The Commission shall assess the migratory situation in a Member State where: (a) that Member State has informed the Commission that it considers itself to be under migratory pressure; (b) on the basis of available information, it considers that a Member State may be under migratory pressure." This first step is supported also by a constant monitoring by the Commission of the migratory situation in the EU through the developing of yearly reports based on information provided by a multitude of actors. Indeed, Article 6(4) specifies that the Commission "shall adopt a Migration Management Report each year setting out the anticipated evolution of the migratory situation and the preparedness of the Union and the Member States". The information necessary to produce this report is also gathered within the Migration Preparedness and Crisis Blueprint framework, proposed within the New Pact on Migration and Asylum and which develops into two stages: the monitoring and preparedness stage, and the migration crisis management stage. This instrument was envisaged with the goal of ensuring that the EU as a whole has a mechanism always ready to respond to crisis situation and mobilize resources timely and efficiently. Afterwards, once the Commission assesses that a member state is indeed in a situation of migratory pressure to the point that its national asylum system is unable to cope, a compulsory mechanism to tackle the situation is activated. Here once more the Commission plays an important role in identifying the needs of the member state in question



and puts forward a report with the appropriate solidarity measures necessary to tackle the crisis situation. At this point, each member state is tasked with drafting a Solidarity Response Plan, sent to the Commission, in which the chosen types of solidarity contributions are indicated. The response from the other member states is mandatory but the way in which it could be carried out is left to the states' discretion; these responses could take the form of relocation assistance, return sponsorships or other actions aimed at strengthening the capacity of member states in the field of asylum and in the external dimension. As for relocation, the share thereof to be provided by each member state is calculated on the base of its population and total GDP following a fair share criterium. Return sponsorship instead refers to a situation when a member state commits to sponsor the return of migrants whose asylum application has not been accepted on behalf of another member state. As for the other solidarity measures that could be adopted, these cover mainly capacity-building support for reception and return of asylum seekers and actions aimed at responding to migratory trends affecting the member state in question through cooperation with third countries. Once the Commission has received the submissions of the Solidarity Plans, it adopts an implementing act setting down all the solidarity contributions for the benefitting state and the timeframe for the execution. To summarize, the development of the Asylum and Migration Management Regulation is constructed on four phases: assessment of the migratory pressure, report on the situation and identification of the measures necessary, submission of solidarity response plans by member states, and implementation acts by the Commission. From this, it is clear that the Asylum and Migration Management Regulation plays a crucial role within the new Pact on Migration and Asylum as it lays the foundation for the development of also the other regulations included within the legislative package of the Pact.

### 3.4 COMMENTARY AND CRITICISMS

As it is clear from the previous paragraph, the changes introduced by the proposals within the New Pact on Migration and Asylum cover issues strongly disputed among member states at the European level, like mandatory intra-state solidarity. This means that the proposal, since its publication, has received some criticisms from both certain EU member states and from scholars as well, despite the fact that the publication of the Pact is quite recent and at the moment there have not been many advancements on the discussions over the proposals. Many state that despite the fact that the primary stated objective of the legislative package presented within Pact

is to promote solidarity to alleviate migratory pressure on certain member states, the proposals fail to address precisely this issue (De Bruycker, 2021). In fact, the concept of first country of entry at the base of the current Dublin Regulation remains and to add up to this, member states of first arrival are subject also to perform the pre-entry screening before directing asylum seekers toward the asylum border procedure or other entry procedures. This of course adds further responsibility on the country of first arrival. Furthermore, the period of time within which the screening phase should be carried out, provided for in the Screening Regulation, is regarded to be too short as it offers maximum five days – plus five more days for exceptional circumstances - to complete the procedure<sup>19</sup>. The same goes for asylum border procedures, as the 12 weeks deadline is considered to be too restrictive especially for those member states that receive high number of asylum seekers and therefore are subject to processing high numbers of applications. More or less the same argument can be applied to return border procedures as well, which were found to reduce in a way the “protective safeguards in place to such an extent that their implementation at the domestic level may amount to violations of international human rights law” (Majcher, 2020: 225). Another issue concerning the respect of fundamental human rights is also the fact that during the pre-entry screening and the asylum border procedure asylum seekers are obliged to remain at the external borders of the EU and not to enter the territory; however, operational buildings devoted to the task of hosting waiting migrants are overall lacking and this could lead also to overcrowding situations. With regard to this, an aspect on which the Pact may fail to intervene is the disparities in the implementation of legislative provisions within all member states. This derives both from the asymmetric pressure member states receive from migratory flows and also from the lack of capacity-building and strong national asylum systems that some member states have.

As for solidarity, it is recognized as probably the most contentious issue concerning asylum management in the Pact. More specifically, relocation, despite being the best option to efficiently alleviate the pressure on a national asylum system in difficulty, has never been a solution on which all member states agreed on, as it is clear also from the response to the 2015 refugee crisis. The significant aspect of these new proposals regards the mandatory character of solidarity mechanisms in times of crisis, in accordance also with Article 80 TFEU. But the Asylum and Migration Management Regulation, besides providing for the obligation for all member states to adopt solidarity measures towards a member state in need, also allow for some

---

<sup>19</sup> European Parliament’s Committee on Civil Liberties, Justice and Home Affairs. *The European Commission's new pact on migration and asylum. Horizontal substitute impact assessment*. 12 August 2021. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS\\_STU\(2021\)694210\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS_STU(2021)694210_EN.pdf)

form of flexibility in this respect. Indeed, member states are free to choose either for relocation, for return sponsorship or to provide other types of support, either financial or operational. This flexibility offered by the Commission, however, is the expression of a disagreement between member states on the relocation issue rather than a way to find a consensus on it, especially if we consider that the action of relocation is, in the effects it produces, quite different from the other options offered, like for example return sponsorship. Indeed, many argues that in particular this latter measure was intended precisely as a way to overcome the competing views of member states within political debates on responsibility- and solidarity-sharing in the EU (Diez, Trauner, and De Somer, 2021). Moreover, it could be added that while this decision to allow flexibility has been made as an effort to probably satisfy the requests of the member states usually contrary to relocation, like the Visegrad countries, this “will not contribute to rebuild trust between the EU Member States that will remain profoundly divided about providing asylum” (De Bruycker, 2021: 36). Following this reasoning, it could be concluded that indeed “solidarity is not conceptualised by the New Pact as the object of an agreement” but rather “it is envisaged [solely as] a choice open to Member States” (De Bruycker, 2021: 40). However, it is also true the contrary, meaning that the Pact does not completely fail in its attempt at strengthening solidarity among member states as this flexibility allowed may be considered instead as a further step in the achievement of a consensus on the legislative proposal in question.

Following the discussion so far, it seems clear that on a political level a lack of convergence on certain crucial issues still persists within EU decision-making venues and the Commission is aware of that. Therefore, the doubt still remains whether the political aspect of legislative proposals should be favoured compared to the highly technical character of the Commission in its drafting and agenda-setting role. At the same time however, the consistent and continuing efforts by the Commission to promote and push for further integration in the field of asylum and migration policies are quite significant and in a broader perspective, also crucial for the achievement of policy harmonization. Indeed, on the long term, everything lies in the attempts by the Commission to break the current status quo in the field of asylum – and more broadly in the Justice and Home Affairs policy area – which at the moment prioritizes political debates and national interests within the Council rather than the adoption of a comprehensive and more technical approach of the Commission itself.

### 3.5 CONCLUSIONS

This chapter focused in detail on the New Pact on Migration and Asylum published by the European Commission in September 2020. These legislative proposals serve the scope of this thesis as they represent the latest attempts by the Commission to bring further integration and harmonization within the field of EU asylum policies. The first paragraph provided for an overview of the framework from which the proposal originated and for an account of the main objectives. Indeed, this new Pact is the result of a process started already in the aftermath of the 2015 refugee crisis when the Commission proposed to reform the system. The crisis had in fact accentuated the many structural shortcomings of the CEAS and exposed the issue of lack of solidarity and responsibility-sharing among member states. The proposed Pact can be inscribed precisely within this framework. The legislative proposals aim at overcoming these issues and establish a comprehensive approach to migration and asylum issues that is European wide, with more efficient and quicker procedures and which fosters the fair sharing of intra-state solidarity and responsibility. The second paragraph went deeper in this respect and analysed in detail the legislative proposals present in the Pact. Both the Screening Regulation, which provides for a pre-entry screening procedure, and the Asylum Procedure Regulation, which introduces a new asylum border procedure, satisfy the purpose of the Commission of reducing the number of asylum applications that the national asylum system would process as during these phases the migrant cannot enter the EU territory. At the same time, they address the problem of mixed migration flows, by channelling the migrants arriving on the EU external borders towards the right procedure, whether it be an asylum procedure or a return one. The new Crisis and Force Majeure Regulation specifically tackles situations of migratory pressure for a member state when there is a concrete risk that the national asylum system would risk failing by extending the time allowed to states for the abovementioned procedures. Finally, this section analysed further the Asylum and Migration Management Regulation which addresses first-hand the issues of solidarity and responsibility-sharing by making solidarity response mandatory for all EU member states, however allowing for flexibility on the measures to choose from. A commentary on all these legislative proposals is proposed in the last paragraph with some emphasis posed on the criticisms raised with regard to some aspects of the Pact. In particular, the time frame allowed for the procedures of pre-entry screening and the asylum border procedures is considered to be too short, taking into account also the fact that some member states may find more difficulty compared to others to process high numbers of applications. Moreover, the flexibility in the solidarity response allowed to member states is the expression

of political disputes on asylum matters in EU venues and not really an objective of the Pact itself. However, considering the central issue of this chapter and the overall point of this thesis, this still serves the purpose of reaching a consensus on a legislative proposal and can be considered as a further step made by the Commission in the direction of achieving more integration on EU asylum policies.

## CONCLUSIONS

This thesis has been developed around two research questions: *how does the European Commission respond to the challenges related to the management of the migration crisis in a more harmonized way? And how does the New Pact on Migration and Asylum fit into this framework?* To answer these questions the work has been structured the following way.

The first chapter set out the institutional framework from which this thesis unfolds; therefore, it serves as the basis for the analyses done in the second and third chapter. The first chapter indeed examined the current institutional setting the EU asylum policy field and its institutionalization process by stressing the key steps taken towards supranationalization as well as the policy- and decision-making dynamics that led to it. By chronologically assessing the institutionalization process of EU asylum policies, the final aim was indeed that of reviewing the current level of integration and policy harmonization of this policy area. The legal basis of EU asylum policies and of the Common European Asylum System lies in art. 67(2), 78 and 80 TFEU. Article 78 TFEU in particular stands out because it specifies the common measures to implement among member states for the establishment of a common asylum system. Besides primary legislation, among the instruments adopted within the CEAS that make for secondary legislation, there is the Dublin III Regulation which is of particular importance because it is at the base of the asylum reception system of the EU. It clarifies the rules for the reception of asylum seekers among member states and determines the country that is responsible to for the examination of the application, that is the first country of entry of the asylum seeker. Following from this, the following sections of this first chapter examined the process that led to this current institutional setting. This is done by firstly analyzing the historical context of refugee protection in Europe. It is pointed out that the 1951 Geneva Refugee Convention represents the normative foundation for the development of asylum policies by providing for the definition of refugee status and for the concept of non-refoulment. From there, the institutionalization process of EU asylum policies and the steps and efforts made for the supranationalization of this policy field are evaluated. Considering the period before the Lisbon Treaty, the Schengen Agreement (1985) and the Dublin Convention (1990) laid out the first measures for asylum, migration and border controls. Then, through treaty-making, the Maastricht Treaty (1993) and following the Amsterdam Treaty (1999) introduced basic standards of asylum protection. In 1999 the Tampere Council was a key turning point for the development of asylum policies as it led to the establishment of the CEAS. Finally, the Lisbon Treaty marked a final shift in asylum policy-

and decision-making moving from basic standards to a common system for asylum management. During this second phase of the CEAS all the previously introduced legislative instruments were upgraded, with the goal of reaching full harmonization.

This first chapter's analysis found that there had been significant advances in the supranationalization of the EU asylum policy field and in its integration process. However, it also highlighted that standards remain unequal and inconsistent between member states. As a result, as the situation in the Mediterranean began to deteriorate in the years after the completion of the second phase of the CEAS, with rising numbers of asylum seekers arriving on EU external borders, the EU asylum reception and management system was not yet fully equipped to confront the refugee crisis that was coming.

The 2015 refugee crisis indeed is considered to be a crucial event that intervened in the EU asylum integration process. For this reason, following from the first chapter, the second chapter is precisely dedicated to the assessment of the crisis and to the EU response in terms of policy proposals and outcomes in the field of asylum. Firstly, the exogenous and endogenous factors that have influenced the migratory movement of such high numbers of asylum seekers towards Europe are examined. Therefore, the first section of this second chapter revealed the extent to which both the geopolitical situation in parts of the Middle East as well as certain measures and decisions on migration and border control adopted at member states level contributed to the emergency situation on the EU borders. The second section goes deeper in into the immediate measures proposed by the Commission and then adopted in order to face the emergency, like relocation and the creation of hotspots for frontline countries. This section also emphasised the political debate that arose within EU policy- and decision-making venues as a result of the crisis. A strong political polarization has arisen between mostly the Southern most hit countries, which were calling for solidarity measures, and the Central European member states, which were contrary to any form of relocation of asylum seekers across the EU. The last section of this chapter then offered a commentary on the emergency measures and also on the proposals that the Commission put forward in the aftermath of the crisis in an attempt at reforming the asylum system. However, despite the efforts of the European Commission as a promoter for deeper integration, the proposals have been met with many deadlocks by the majority of member states, mostly due to national political interests. Therefore, this second chapter revealed that indeed the Commission has tried to address the shortcomings of the CEAS which became evident with the insurgence of the refugee crisis, despite the fact that within the EU policy- and decision-making venues there was a strong political polarization and therefore a deep lack of

convergence among member states on the measures to adopt. Still, the Commission never ceased pushing for a more comprehensive and uniformed asylum and migration system at the EU level to overcome these challenges. In this regard, its most recent proposal, the New Pact on Migration and Asylum, was intended precisely for this purpose.

The third and last chapter of this thesis focused in detail precisely on the New Pact and on the legislative proposals therein envisaged, with the aim of highlighting the Commission's efforts in fostering further integration and harmonization within the field of EU asylum policies. This is done so by firstly inspecting the framework within which the proposal originates and the objectives it states it wants to achieve. Afterwards, the chapter went deeper in this respect and analysed the proposals present within the Pact. Both the Screening Regulation, which provides for a pre-entry screening procedure, and the Asylum Procedure Regulation, which introduces a new asylum border procedure, satisfy the objective of the Commission of reducing the number of asylum applications that the national asylum system would process as during these phases the migrant cannot enter the EU territory. The Asylum and Migration Management Regulation instead tackles the issues of solidarity and responsibility-sharing by requiring mandatory solidarity response in times of crisis however allowing for flexibility on the measures to choose from. The last section of this chapter then offered a commentary on all these legislative proposals both from a political and procedural perspective emphasizing certain criticisms encountered with respect to some aspects. For example, the flexible solidarity response allowed to member states reveals the lack of convergence of member states on some asylum matters like relocation. However, considering the central issue of this chapter and the overall point of this thesis, this possibility should be taken as part of a negotiation made by the Commission aimed at reaching a consensus on a legislative proposal. This final chapter concluded that, despite the New Pact failed in certain aspects with regard to some of the objectives it had set to achieve, it still serves the overall aim of this thesis in stressing the Commission's role in fostering further integration. This is evident from the attempt by the Commission to push member states to converge on the Pact's legislative proposals, for example through the possibility offered by the Asylum and Migration Management Regulation to allow for mandatory but flexible solidarity measures. For this reason, the New Pact could be considered a further step in the direction of achieving more integration of EU asylum policies.

As a final consideration, asylum and migration remain sensitive policy areas and therefore central to the EU policy agenda, despite the fact that it may seem that there might be at the



moment more pressing situations that cover the public and institutional debate. Indeed, the inflows of high numbers of irregular migrants into the EU has never stopped, even in the aftermath of the 2015 refugee crisis when the emergency situation seemed to have been put under control. Examples are the most recently Belarus-EU border crisis or the Ukrainian refugee crisis. In this latter case in particular, the Russian invasion of Ukraine worked as a push factor for the arrivals of thousands of asylum seekers on the external borders of the EU, which created the context for a humanitarian emergency. This means that the geopolitical situation in neighbouring countries play a significant part in the migration flows towards Europe. At the same time however, it is also true that the EU is still far from the creation of an asylum reception and management system that is harmonized and efficient in all member states and this negatively contributes to the emergency situations with migrants and asylum seekers that usually happens on EU external borders. For this reason, for the purpose of this thesis, I decided to carry on an analysis of the New Pact on Migration and Asylum as it claimed to specifically address the problems so far discussed in matters of asylum. Therefore, the third chapter follows the first and second one in this reasoning, highlighting the EU project of asylum policy harmonization and the role played by the Commission in this direction.

Taking into account the theoretical framework offered by neofunctionalism, as a conclusion to this thesis it could be argued that the New Pact per se fails to bring further integration in this policy field insofar as at the moment the proposal is still stuck in its legislative process and the Council has still yet to begin negotiations on the central matters offered by the Pact. Therefore, to answer the initial research questions, it could be argued that the EU has failed to efficiently respond to the challenges related to asylum management. However, according to neofunctionalism, if we consider integration in the form of a process (Niemann, 2021), then it could be also concluded that the New Pact perfectly fits into a framework of continuous efforts by a supranational actor such as the Commission in fostering more integration of EU asylum policies. Therefore, the developments of this thesis confirm the initial hypothesis: the Commission has played a notable part in the promotion of more integration and policy harmonization of the asylum policy field at the EU level. Indeed, the case study on the New Pact on Migration and Asylum, despite failing to fully address the shortcomings of the system, serves as an explicatory instance of the Commission's efforts in promoting integration.

Following from this and considering future research scenarios, it could be interesting to see how the New Pact on Migration and Asylum will progress in its legislative process and therefore, to understand whether member states, thanks also to the guidance of the Commission,

will converge on some of the proposals inscribed within the Pact. In this sense, depending also on how the EU asylum policy field will develop in the future, the work done with this thesis could be an interesting starting point for a future analysis of the Commission's attempts at fostering harmonization and integration of this policy field at the EU level.

## BIBLIOGRAPHY

Bendel, P. & Ripoll Servent, A., 2017. Asylum and refugee protection: EU policies in crisis. In Ripoll Servent, A., & Trauner, F. (eds.), *The Routledge Handbook of Justice and Home Affairs Research*. Routledge, pp. 59-69.

Carrera, S., 2021. Whose Pact? The Cognitive Dimensions of the EU Pact on Migration and Asylum. In *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees*, pp. 1-24.

Cherubini, F., 2014. *Asylum law in the European Union*. Routledge.

Council of the European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in The European Union*, OJ C 53/01, 3 March 2005.

Council of the European Union, *The Stockholm Programme - An open and secure Europe serving and protecting citizens*, OJ C 115/1, 4 May 2010.

De Bruycker, P., 2022. The New Pact on Migration and Asylum: What it is not and what it could have been. *Reforming the Common European Asylum System*, pp. 33-42.

Diez, O.S., Trauner, F. and De Somer, M., 2021. Return Sponsorships in the EU's New Pact on Migration and Asylum: High Stakes, Low Gains. *European Journal of Migration and Law*, 23(3), pp. 219-244.

European Commission, 2007. *Commission Green Paper on the Future Common European Asylum System*, COM/2007/301 final, 6 June 2007.

European Commission, 2008. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum. An Integrated Approach to Protection Across the EU*, COM/2008/360, 17 June 2008.

European Commission, 2015. *Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration*. COM/2015/240 final, 13 May 2015.

European Commission, 2015. *Press Release. European Commission makes progress on Agenda on Migration*. 27 May 2015.

Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_5039](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5039)

European Commission, 2015. *Press Release. Refugee Crisis: European Commission takes decisive action*. 9 September 2015.

Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_5596](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5596)

European Commission, 2016. *Press Release. Securing Europe's external borders: Launch of the European Border and Coast Guard Agency*, 6 October 2016.

Available at: [http://europa.eu/rapid/press-release\\_IP-16-3281\\_en.pdf](http://europa.eu/rapid/press-release_IP-16-3281_en.pdf)

European Commission, 2016. *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*. COM/2016/270 final, 4 May 2016.

European Commission, 2017. *Report from the Commission to the European Parliament, the European Council and the Council. Fifteenth report on relocation and resettlement*. COM/2017/465, 6 September 2017.

European Commission, 2020. *Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*. COM/2020/611 final, 23 September 2020.

European Commission, 2020. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*. COM/2020/609 final, 23 September 2020.

European Commission, 2020. *Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration.* OJ L 317/26, 1 October 2020.

European Commission, 2020. *Press Release. A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity.* 23 September 2020.

Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706)

European Commission, 2020. *Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817.* COM/2020/612 final, 23 September 2020.

European Commission, 2020. *Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation on the Asylum and Migration Fund.* COM/2020/610 final, 23 September 2020.

European Commission, 2020. *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, 23 September 2020.

European Council, 1999. *Presidency Conclusions of the Tampere European Council,* 15-16 October 1999.

European Council, 2015. *Council Decision Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece.* 12098/15, 22 September 2015.

European Parliament, 2022. *Joint Roadmap of the European Parliament and Rotating Presidencies of the Council on the organisation, coordination, and implementation of the timeline for the negotiations between the co-legislators on the CEAS and the New European Pact on migration and asylum.* 7 September 2022.

Available at:

<https://www.europarl.europa.eu/resources/library/media/20220907RES39903/20220907RES39903.pdf>

European Parliament's Committee on Civil Liberties, Justice and Home Affairs. *The European Commission's new pact on migration and asylum. Horizontal substitute impact assessment*. 12 August 2021. Available at:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS\\_STU\(2021\)694210\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS_STU(2021)694210_EN.pdf)

European Union Agency for Asylum. *Latest Asylum Trends – 2015 overview*.

Available at: <https://euaa.europa.eu/sites/default/files/public/LatestAsylumTrends20151.pdf>

European Union, 1992. *Treaty on European Union (Treaty of Maastricht)*, OJ C 191/1, 29 July 1992.

European Union, 1997. *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*, OJ C 340/1, 10 November 1997.

European Union, 2007. *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, OJ C 306/1, 17 December 2007.

European Union, 2011. *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*. OJ L 337/9, 20 December 2011.

European Union, 2013. *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*. OJ L 180/60, 26 June 2013.

European Union, 2013. *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*. OJ L 180/96, 26 June 2013.

Eurostat, 2015. *Asylum Applicants and First Instance Decisions on Asylum Applications: 2014*. March 2015.

Available at: <http://ec.europa.eu/eurostat/documents/4168041/6742650/KS-QA-15-003-EN-N.pdf/b7786ec9-1ad6-4720-8a1d-430fcfc55018>

Eurostat, 2016. *Record number of over 1.2 million first time asylum seekers registered in 2015*. 4 March 2016.

Available at: <https://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6>

Geddes, A., 2020. Asylum. In Geddes, A., Hadj Abdou, L. and Brumat, L., 2020. *Migration and mobility in the European Union*. 2nd ed. Bloomsbury Publishing, pp. 113-130.

Grahl-Madsen, A., 1966. The European tradition of asylum and the development of refugee law. *Journal of Peace Research*, 3(3), pp.278-288.

Guiraudon, V., 2000. European integration and migration policy: Vertical policy-making as venue shopping. *JCMS: Journal of Common Market Studies*, 38(2), pp.251-271.

Guiraudon, V., 2018. The 2015 refugee crisis was not a turning point: Explaining policy inertia in EU border control. *European Political Science*, 17(1), pp. 151-160.

Haas, E.B., 1958. The challenge of regionalism. *International Organization*, 12(4), pp. 440-458.

Haas, E.B., 1961. International integration: The European and the universal process. *International organization*, 15(3), pp. 366-392.

International Organization for Migration. *Missing migrant project data portal*. Available at: [https://missingmigrants.iom.int/region/mediterranean?region\\_incident=All&route=3891&year%5B%5D=2516&month=All&incident\\_date%5Bmin%5D=&incident\\_date%5Bmax%5D=](https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3891&year%5B%5D=2516&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=)

Jones, S., 2015. 1.7m Syrian refugees face food crisis as UN funds dry up. *The Guardian*. 1 December 2014.

Juncker, C.J., 2017. *State of the Union Address*, 13 September 2017.

Kaunert, C. and Léonard, S., 2012a. The development of the EU asylum policy: venue-shopping in perspective. *Journal of European Public Policy*, 19(9), pp.1396-1413.

Kaunert, C. and Léonard, S., 2012b. The European Union asylum policy after the Treaty of Lisbon and the Stockholm Programme: towards supranational governance in a common area of protection?. *Refugee Survey Quarterly*, 31(4), pp.1-20.

Kaunert, C., 2009. Liberty versus security? EU asylum policy and the European Commission. *Journal of contemporary European research*, 5(2), pp. 148-170.

Lavenex, S., 2001. The Europeanization of refugee policies: Normative challenges and institutional legacies. *JCMS: Journal of Common Market Studies*, 39(5), pp. 851-874.

Lavenex, S., 2018. 'Failing forward' towards which Europe? Organized hypocrisy in the common European asylum system. *JCMS: Journal of Common Market Studies*, 56(5), pp. 1195-1212.

Lindberg, L.N., 1963. *The political dynamics of European economic integration*. Stanford University Press.

Majcher, I., 2020. The EU return system under the Pact on Migration and Asylum: A case of tipped interinstitutional balance?. *European Law Journal*, 26(3-4), pp. 199-225.

McAdam, J., 2017. The enduring relevance of the 1951 Refugee Convention. *International Journal of Refugee Law*, 29(1), pp. 1-9.



Niemann, A. and Speyer, J., 2018. A neofunctionalist perspective on the 'European refugee crisis': The case of the European Border and Coast Guard. *JCMS: Journal of Common Market Studies*, 56(1), pp. 23-43.

Niemann, A., and Zaun, N., 2018. EU refugee policies and politics in times of crisis: theoretical and empirical perspectives. *JCMS: Journal of Common Market Studies*, 56(1), pp. 3-22.

Niemann, A., 2021. Neofunctionalism. In *The Palgrave handbook of EU crises*, pp.115-133.

Orchard, P., 2014. *A right to flee*. Cambridge University Press.

Orchard, P., 2018. The historical development of refugee protection in Europe. In Weinar, A., Bonjour, S. and Zhyznomirska, L. (eds.) *The Routledge Handbook of the Politics of Migration in Europe*. Routledge, pp. 283-292.

Scipioni, M., 2018. Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis. *Journal of European Public Policy*, 25(9), pp. 1357-1375.

Thym, D. and Hailbronner, K., 2016. Legal Framework for EU Asylum Policy. In Thym, D. and Hailbronner, K. (eds.) *EU Immigration and Asylum Law. Commentary, 2<sup>nd</sup> Edition*. C.H. Beck, pp. 1023-1053.

Trauner, F. and Ripoll Servent, A., 2016. The communitarization of the area of freedom, security and justice: Why institutional change does not translate into policy change. *JCMS: Journal of common market studies*, 54(6), pp. 1417-1432.

Trauner, F., 2016. Asylum policy: the EU's 'crises' and the looming policy regime failure. *Journal of European Integration*, 38(3), pp. 311-325.

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189.

Zaragoza-Cristiani, J., 2015. Analysing the causes of the refugee crisis and the key role of Turkey: why now and why so many?. *Robert Schuman Centre for Advanced Studies*, Research Paper No. RSCAS, 95.

Zaun, N., 2017. *EU asylum policies. The Power of Strong Regulating States*. Palgrave Macmillan.

Zaun, N., 2018. A common European asylum system?: How variation in Member States' administrative capacity undermines EU asylum harmonisation. In Weinar, A., Bonjour, S. and Zhyznomirska, L. (eds.) *The Routledge Handbook of the Politics of Migration in Europe*. Routledge, pp. 315-329.



## *Summary*

### INTRODUCTION

The general objective of the thesis is to analyse the work of the European Union in the framework of its asylum policies and of the Common European Asylum System (CEAS), with particular regard to the supranational role played by the European Commission. The CAES has shown in the past its weakness, especially in the case of the 2015 refugee crisis, which may derive in part from the very nature of European integration in asylum policy and from the “lack of solidarity, shared responsibility, and trust among member states” (Bendel & Ripoll Servent, 2017). In 2020, the European Commission proposed to reform the system through the New Pact on Migration and Asylum (2020), which claims to account for a comprehensive European approach to asylum and migration. The main focus will be on the policies introduced to manage migration and asylum flows during the crisis and in its aftermath, arriving to the latest proposal of the New Pact on Migration and Asylum with the aim of understanding the way in which the criticalities previously encountered in this policy field are addressed through supranational efforts. The final goal is to highlight through what policies and decision-making dynamics it is possible to reach a higher level of harmonization at EU level in this policy area.

Following from this, my research questions are: *How does the EU respond to the challenges related to the management of the migration crisis in a more harmonized way? And how does the New Pact on Migration and Asylum fit into this framework?*

To answer these research questions, I will draw on the existing literature in the field of European integration and asylum policies and on past and current European legislation dealing with these matters. A lot has been written about the EU asylum system and policies since the beginning of its institutionalization process. Much of the existing literature in this policy field revolves around the questions of European harmonization and integration which led to a scholarly debate over the degree of cooperation at EU level on asylum issues and the theories that best account for this.

A big part of the literature is composed of working and policy papers on the 2015 refugee crisis, which from a mainly descriptive analysis point of view underline the critical points of the EU asylum system and the lack of an efficient response to the crisis. Indeed, scholarly debate

generally converges on the idea that the EU has failed to efficiently respond to the crisis and to take advantage of the situation for bringing further integration in the asylum policy field.

To this day, there are some academic works that focus on particular aspects of the New Pact on Migration and Asylum, but the literature lacks a comprehensive analysis of the proposal and the way it relates to the harmonization goal that it aims to achieve. However, researchers generally converge on the idea that the legislative proposals present in the Pact do not fulfill the objectives the Commission had set out.

This thesis aspires to contribute to the existing literature by offering a comprehensive assessment of the way the Commission tries to address the shortcomings of the asylum system through the New Pact and therefore the role it plays in pushing for more harmonization among member states in this policy field.

The theoretical base from which the thesis unfolds is outlined by the neo-functionalist theory of European integration, which may explain the level of integration of asylum policies at EU level and the dynamics of policy- and decision-making that have ultimately led to the proposal by the European Commission of the New Pact on Migration and Asylum. There are many other theories of European integration employed by scholars, but since the main focus of this thesis is on the harmonization attempts carried on by a supranational institution such as the European Commission, neofunctionalism better fits into this framework. Already since the outbreak of the refugee crisis in 2015, the European Commission has presented several measures aimed both at finding solutions to the emergency and at planning future management tools to address the migration crisis. However, these measures have so far showed the shortcomings of the CEAS. The argument is that the refugee crisis, from whose failure the proposal of the New Pact on Migration and Asylum originates, together with the level of integration already in place in asylum policy, created a 'spill overs' effect which resulted in the development of this latest attempt at greater harmonization by the European Commission.

The neo functionalist theory was first developed by Haas in 1958 with the aim of explaining regional integration in Europe in the aftermath of World War II. The original idea behind neofunctionalism is based on the notion that cooperation in one policy field would place pressure on another related policy field and therefore leading to further integration. It rests on the premise that certain policy sectors are so interdependent that they cannot be excluded from the integration process. Therefore, the regional integration of one sector is only possible in combination with the integration of other sectors. That is why Haas and other scholars have then advanced the concept of spillovers to explain this process. The term functional spillovers

precisely defines the integration process that results from a functional interest. In this sense, the theory gained much consensus in the early 60s in Europe as it applied well to the integration process that the Community was undergoing during those years. Other two kinds of spillovers were developed to explain neofunctionalism: political and cultivated spillovers. Political spillovers occur when there is a shift of loyalty for national political elites from national to supranational policy- and decision-making venues because it is acknowledged that supranational cooperation is necessary to find solutions to specific problems; this would provide supranational institutions with political pressure for integration. In this sense, the role played by supranational institutions would give additional incentive for regional integration; this is the concept at the base of cultivated spillovers. Since its publication this theory has been revisited by many scholars and has been applied to many different policy areas within the EU. The neofunctionalist theory has been applied to the migration field as well. Indeed, it could be argued that the Schengen Agreement (1985), because it allowed for the free movement of people within Europe, led to a convergence of member states' interests on the external borders, therefore making migration and asylum policies into the EU policy agenda. With the 2015 refugee crisis, some scholars tried to test the neofunctionalist assumption to the EU policy response. The general assumption is that, following neofunctionalism, we should have witnessed further integration steps within the EU asylum policy field resulting from the spillovers' effects created by the crisis; a circumstance that did not happen. For this reason, to this day, neofunctionalism is not very often employed by scholars compared to other integration theories within research on integration of EU asylum and migration policies. However, it could still provide for important contributions in understanding certain aspects of the integration process. For the purpose on this thesis in particular, neofunctionalism and the concept of cultivated spillovers perfectly fits into the framework delineated by my research questions on the Commission's. Therefore, following from this, the hypothesis this thesis wants to test is the following: Building on its right of legislative initiative, the European Commission seeks to promote deeper integration and harmonisation of asylum policies at the EU level. This hypothesis is tested on the New Pact on Migration and Asylum.

The methodology employed for this thesis amounts to a systematic assessment of the institutional and policy framework of EU asylum policies following the theoretical framework of neo-functionalism. Overall this thesis' work is developed in a mainly chronological order, highlighting the role of the European Commission firstly in the response to the 2015 refugee crisis and then with the publication of the New Pact on Migration and Asylum in 2020. Indeed,

starting from the institutionalization process of EU asylum policies, then inspecting the 2015 refugee crisis and the EU response, and finally arriving to the New Pact on Migration and Asylum, this thesis highlights the Commission's efforts to reform the EU asylum system and harmonize asylum policies at the EU level.

For the first chapter I will draw first and foremost on the official legislative documents that make up primary and secondary legislation in matters of asylum and on the academic paper that cover the historical evolution of the asylum policy field. Then, for the second chapter, the analysis proposed with regard to the 2015 refugee crisis is based mainly on academic research articles. The selected bibliography all contributes to the inspection of the research questions and to test the hypothesis, whether by supporting it or offering a contrary opinion. This also applies to the last chapter, which offers a case-study analysis of the New Pact on Migration and Asylum based on the inspection of the official documents of the proposals and of academic papers.

## CONTENT

To answer the research questions and test the hypothesis, this thesis starts from the delineation of the institutionalization process of this policy area and the current institutional setting.

For many years, asylum and migration policies have been seen as major objectives for the construction of a zone of freedom, security, and justice in the EU, and many scholars have been interested in analysing the integration and cooperation project of this policy area. The first chapter analyses the institutional framework of the EU asylum policy field and its institutionalization process by highlighting the important steps made in the direction of further supranationalization of asylum policies and the policy- and decision-making dynamics that contributed to it. The final aim is to assess the current integration level of asylum policies at the EU level. The legal basis of EU asylum policies and of the CEAS lies in art. 67(2), 78 and 80 of the Treaty on the Functioning of the European Union (TFEU). These articles make up for EU primary law in matters of asylum. Article 67(2) TFEU states that one of the primary objectives of the EU is to build a common asylum policy based on the shared solidarity between member States. This latter concept is underlined more explicitly also in Article 80 TFEU, which affirms that “the policies of the Union set out in this Chapter [chapter two ‘Policies on border checks, asylum and immigration’ under Title V ‘Area of freedom, security and justice’] and their implementation shall be governed by the principle of solidarity and fair sharing of

responsibility, including its financial implications, between the Member States". Article 78 TFEU in particular stands out because it outlines the common measures to adopt for a common asylum system. Besides primary legislation, the instruments adopted within the CEAS that make for secondary legislation are the three main directives - the Reception Conditions Directive, the Qualification Directive, and the Asylum Procedures Directive -; the Dublin III Regulation whose concept of first-country-of-entry is at the base of the asylum reception system in the EU; the EURODAC Regulation, which supports the implementation of Dublin III through a database of fingerprints of asylum seekers entering Europe; and finally the European Union Agency for Asylum, a specialized agency supporting member states in applying the EU asylum acquis. The Dublin III Regulation is of particular importance because it is at the base of the asylum reception system of the EU as it clarifies the rules for the reception of asylum seekers among member states and determines the country that is responsible to for the examination of the application, that is the first country of entry of the asylum seeker. In order to arrive to this current institutional setting of asylum policies, there has been an historical development that started in the aftermath of World War II and continued with the institutionalization process at the EU level.

Throughout the course of history, asylum protection has been a concept strictly associated with the European context. Even before the end of World War II, which exposed the problem of refugees across the European continent and therefore the consequent need for an international system of refugee protection, there were already examples of some form of refugee policies in some European countries. Then, the Geneva Convention on the Status of Refugees was signed in 1951 and since then, it has represented the normative foundation for the development of asylum policies in the EU. As for the institutionalization process, At first, the fundamental goals and instruments of EU asylum, and also border control and immigration measures, were formulated in the Schengen Agreement and the Dublin Convention, signed respectively in 1985 and 1990 and entered into force few years later. Further steps were then taken through treaty-making, first the Maastricht and then the Amsterdam Treaty, which introduced minimum standards of asylum protection across the EU. In the meantime, the Tampere Council in 1999 represented a fundamental mark in EU asylum policy-making because that is when the Common European Asylum System, the framework upon which EU asylum policies rest, was conceived, with a first phase of the CEAS (1999-2005) focused on laying the foundation of today's asylum policies. The Lisbon Treaty finally, marked the shift for asylum policy- and decision- making from basic standards to building a common system with a uniform status and uniform processes for the whole Union and launched the second phase of the CEAS (2008-



2013), during which all the legislative instruments previously introduced were upgraded, with the aim of reaching a full harmonization.

The analysis in this chapter reveals that there had been many improvements in the integration process of EU asylum policies, and it is evident that the European Commission has played a part in pushing towards that end. Yet standards remained uneven and too varied across the member states. This means that the long-term goal of achieving full integration within the CEAS is far from being reached. Therefore, when in the years following the end of the second phase of the CEAS the situation in the Mediterranean was starting to deteriorate in terms of the increasing numbers of arrivals of asylum seekers on EU Southern shores, the EU asylum reception system was not yet fully prepared to face the crisis that was coming.

The second chapter examines the refugee crisis that hit Europe in 2015 as a crucial event that intervened in the process of integration undertaken by the EU during the years in the field of asylum policies. Indeed, when tackling EU asylum policies and their integration process, one cannot elude itself to analyze the refugee crisis that broke out in 2015, which called into question the CEAS as a whole and the achievements hitherto obtained at the EU level in this policy area.

A situation of perceived crisis began already in 2014, then reached its peak in late 2015 and the emergency continued for almost all 2016. The numbers of asylum seekers arriving in Europe rose exponentially and put high pressure on the asylum systems of both national governments and EU institutions. In reality the crisis situation was not as unexpected as it could be perceived. Indeed, already before its peak, the EU had been monitoring arrivals of asylum seekers on its borders and registering an increase. The member states at the southern borders have always experienced first-hand migration flows and a certain pressure on their national asylum systems. In particular, the Central Mediterranean route, starting from North Africa and arriving on the shores of Italy, was the most used path used by migrants to arrive in Europe. This shifted in 2015, as the majority of asylum seekers were Syrians, therefore arriving first in Turkey and then entering in Greece through the Eastern Mediterranean route. There have been both exogenous and endogenous factors that have influenced the migratory movement of such high numbers of asylum seekers towards Europe. The geopolitical situation in parts of the Middle East, particularly the civil war in Syria, has been revealed as the prevailing factor. However, certain measures and decisions on migration and border control adopted in the years prior by member states have also played a part and influenced the modalities in which the crisis unfolded. For example, the border fence with Turkey built by Greece first and then Bulgaria as well deviated the flux of asylum seekers towards the Aegean Sea, as it was their only option to

the enter Greek soil, in this way creating the conditions for shipwrecks to happen and for asylum seekers to be stranded in refugees camps on the Turkey-Greek border.

The crisis has given rise to a political debate at the EU level which in turn transformed into a strong polarization. On one side, the most hit countries like Greece and Italy called for solidarity measures between member states to help ease the pressure on their national asylum systems. On the other hand, the Visegrad group, composed of Czech Republic, Hungary, Poland and Slovakia, has been against any form of relocation of asylum seekers across the EU and against form of fair sharing of responsibility between member states. Germany, for its part, tried to play a role in convincing member states to converge on more integrated measures but failed in its endeavor. Already in May 2015, the Commission proposed a European Agenda on Migration (COM/2015/240 final), outlining the efforts and immediate measures needed to face the crisis and to improve migration management in the following years. Notwithstanding considerable opposition from the Visegrád countries on the base of the political polarization explained above, in September 2015 the Justice and Home Affairs Council at last decided by qualified majority voting to relocate 160 000 asylum seekers across the EU. Other than these immediate actions put forward by the Commission, among the solutions adopted by the EU to countering the crisis was the strengthening of the role and competencies of EU agencies in the field. The case on point is the creation from Frontex of the European Border and Coast Guard (EBCG) which has been granted the power to perform regular mandatory assessment of the member states' capacity at border management and in case any shortages are observed and not addressed by the member state, the Council may decide by qualified majority voting to assign border guards to the member state in question.

In the aftermath of the crisis, the Commission proposed a series of reforms of both the Dublin system and of the other instruments of the CEAS. In particular, the proposal for a Dublin IV Regulation, with the proposed innovation of a relocation system in case of emergencies, has been quite a topic of political discussion between member states. However, despite the work done by the European Commission as promoter of deeper integration, the proposals have been met with serious deadlocks by the majority of member states mainly on the base of national political interests.

this second chapter reveals that indeed the Commission has tried to address the shortcomings of the CEAS which became evident with the insurgence of the refugee crisis, despite the fact that within the EU policy- and decision-making venues there was a strong political polarization and therefore a deep lack of convergence among member states on the measures to adopt. Still, the Commission never ceased pushing for a more comprehensive and uniformed asylum and

migration system at the EU level to overcome these challenges. In this regard, its most recent proposal, the New Pact on Migration and Asylum, was intended precisely for this purpose.

The third and last chapter of this thesis focuses in detail precisely on the New Pact and on the legislative proposals therein envisaged, as they serve the scope of this thesis in underlying the latest attempts by the Commission to bring further integration and harmonization within the field of EU asylum policies. This New Pact is the result of a process started already in the aftermath of the 2015 refugee crisis when the Commission proposed to reform the system. The crisis had in fact accentuated the many structural shortcomings of the CEAS and exposed the issue of lack of solidarity and responsibility-sharing among member states. The legislative proposals aim at overcoming these issues and establishing a comprehensive approach to migration and asylum issues that is European wide, with more efficient and quicker procedures and which fosters the fair sharing of intra-state solidarity and responsibility.

The legislative package enclosed within the Pact includes an Asylum Procedures Regulation and EURODAC Regulation, which amend the ones proposed in 2016, a new Screening Regulation, a new Asylum and Migration Management Regulation, and a new Crisis and Force Majeure Regulation. Both the Screening Regulation, which provides for a pre-entry screening procedure, and the Asylum Procedures Regulation, which introduces a new asylum border procedure, satisfy the purpose of the Commission of reducing the number of asylum applications that the national asylum system would process as during these phases the migrant cannot enter the EU territory. At the same time, they address the problem of mixed migration flows, by channelling the migrants arriving on the EU external borders towards the right procedure, whether it be an asylum procedure or a return one. The new Crisis and Force Majeure Regulation specifically tackles situations of migratory pressure for a member state when there is a concrete risk that the national asylum system would risk failing by extending the time allowed to states for the abovementioned procedures. The Asylum and Migration Management Regulation instead tackles the issues of solidarity and responsibility-sharing by requiring mandatory solidarity response in times of crisis however allowing for flexibility on the measures to choose from.

the changes introduced by the proposals within the New Pact on Migration and Asylum cover issues strongly disputed among member states at the European level, like mandatory intra-state solidarity. This means that the proposal, since its publication, has received some criticisms from both certain EU member states and from scholars as well. In particular, the time frame allowed for the procedures of pre-entry screening and the asylum border procedures is considered to be

too short, taking into account also the fact that some member states may find more difficulty compared to others to process high numbers of applications. Moreover, the flexibility in the solidarity response allowed to member states reveals the lack of convergence of member states on some asylum matters like relocation and is the expression of the political disputes on asylum matters in EU venues. However, considering the central issue of this chapter and the overall point of this thesis, this still serves the purpose of reaching a consensus on a legislative proposal and can be considered as a further step made by the Commission in the direction of achieving more integration on EU asylum policies.

## CONCLUSIONS

As a final consideration, asylum and migration remain sensitive policy areas and therefore central to the EU policy agenda, despite the fact that it may seem that there might be at the moment more pressing situations that cover the public and institutional debate. Indeed, the inflows of high numbers of irregular migrants into the EU has never stopped, even in the aftermath of the 2015 refugee crisis when the emergency situation seemed to have been put under control. Examples are the most recently Belarus-EU border crisis or the Ukrainian refugee crisis. In this latter case in particular, the Russian invasion of Ukraine worked as a push factor for the arrivals of thousands of asylum seekers on the external borders of the EU, which created the context for a humanitarian emergency. This means that the geopolitical situation in neighbouring countries play a significant part in the migration flows towards Europe. At the same time however, it is also true that the EU is still far from the creation of an asylum reception and management system that is harmonized and efficient in all member states and this negatively contributes to the emergency situations with migrants and asylum seekers that usually happens on EU external borders. For this reason, for the purpose of this thesis, I decided to carry on an analysis of the New Pact on Migration and Asylum as it claimed to specifically address the problems so far discussed in matters of asylum. Therefore, the third chapter follows the first and second one in this reasoning, highlighting the EU project of asylum policy harmonization and the role played by the Commission in this direction.

Taking into account the theoretical framework offered by neofunctionalism, as a conclusion to this thesis it could be argued that the New Pact per se fails to bring further integration in this policy field insofar as at the moment the proposal is still stuck in its legislative process and the

Council has still yet to begin negotiations on the central matters offered by the Pact. Therefore, to answer the initial research questions, it could be argued that the EU has failed to efficiently respond to the challenges related to asylum management. However, according to neofunctionalism, if we consider integration in the form of a process (Niemann, 2021), then it could be also concluded that the New Pact perfectly fits into a framework of continuous efforts by a supranational actor such as the Commission in fostering more integration of EU asylum policies. Therefore, the developments of this thesis confirm the initial hypothesis: the Commission has played a notable part in the promotion of more integration and policy harmonization of the asylum policy field at the EU level. Indeed, the case study on the New Pact on Migration and Asylum, despite failing to fully address the shortcomings of the system, serves as an explicatory instance of the Commission's efforts in promoting integration.

Following from this and considering future research scenarios, it could be interesting to see how the New Pact on Migration and Asylum will progress in its legislative process and therefore, to understand whether member states, thanks also to the guidance of the Commission, will converge on some of the proposals inscribed within the Pact. In this sense, depending also on how the EU asylum policy field will develop in the future, the work done with this thesis could be an interesting starting point for a future analysis of the Commission's attempts at fostering harmonization and integration of this policy field at the EU level.