MASTER THESIS

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An Analysis of Policy Change triggered through 'Crisis'
Transformation of the Common European Asylum System within a Vicious Cycle

verfasst von / submitted by

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Für meinen Vater

Die Welt wird schöner mit jedem Tag,
Man weiß nicht was noch werden mag, […]

(Ludwig Uhland)

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List of Abbreviations

ACF	Advocacy Coalition Framework
AfD	Alternative für Deutschland
AFSJ	Area of Freedom, Security and Justice
ALDE	Alliance of Liberals and Democrats for Europe
AMIF	Asylum Migration and Integration Fund
CDU/CSU	Christlich Demokratische Union/Christlich-Soziale Union
CEAS	Common European Asylum System
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
Commission / EC	European Commission
Council	Council of the European Union
DG	Directorate-General
EASO	European Asylum Support Office
ECJ	European Court of Justice
ECR	European Conservatives and Reformists
ECRE	European Council on Refugees and Exiles
EFDD	Europe of Freedom and Direct Democracy
EMN	European Migration Network
ENF	Europe of Nations and Freedom
EP	European Parliament
EPP	European People's Party
EU	European Union
EUNAVFOR Med	European Union Naval Force – Mediterranean
EUREMA	EU Pilot Project on Intra-EU Relocation from Malta
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
FPÖ	Freiheitliche Partei Österreichs
Frontex	European Border and Coast Guard Agency
Greens–EFA	Greens–European Free Alliance
GUE/NGL	The Left group in the European Parliament
JHA	Justice and Home Affairs Council
LIBE Committee	Committee on Civil Liberties, Justice and Home Affairs
MEP	Member of the European Parliament
MS	Member state (of the European Union)
NGO	Non-Governmental Organisation
ÖVP	Österreichische Volkspartei
QMV	Qualified majority voting
S&D	Progressive Alliance of Socialists & Democrats
SIS	Schengen Information System
SPÖ	Sozialdemokratische Partei Österreichs
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
V4	Visegrád Four (Czech Republic, Hungary, Poland and Slovakia)

"We Europeans should remember well that Europe is a continent where nearly everyone has at one time been a refugee. Our common history is marked by millions of Europeans fleeing from religious or political persecution, from war, dictatorship, or oppression.

Huguenots fleeing from France in the 17th century. Jews, Sinti, Roma and many others fleeing from Germany during the Nazi horror of the 1930s and 1940s.

Spanish republicans fleeing to refugee camps in southern France at the end of the 1930s after their defeat in the Civil War.

Hungarian revolutionaries fleeing to Austria after their uprising against communist rule was oppressed by Soviet tanks in 1956.

Czech and Slovak citizens seeking exile in other European countries after the oppression of the Prague Spring in 1968.

Hundreds and thousands were forced to flee from their homes after the Yugoslav wars.

Have we forgotten that there is a reason there are more McDonalds living in the U.S. than there are in Scotland? That there is a reason the number of O'Neills and Murphys in the U.S. exceeds by far those living in Ireland?

Have we forgotten that 20 million people of Polish ancestry live outside Poland, as a result of political and economic emigration after the many border shifts, forced expulsions and resettlements during Poland's often painful history?

Have we really forgotten that after the devastation of the Second World War, 60 million people were refugees in Europe? That as a result of this terrible European experience, a global protection regime – the 1951 Geneva Convention on the status of refugees – was established to grant refuge to those who jumped the walls in Europe to escape from war and totalitarian oppression?

We Europeans should know and should never forget why giving refuge and complying with the fundamental right to asylum is so important."

(Jean-Claude Juncker, State of the Union 2015)

1. Introduction

As migration does not stop at the borders of countries, a national approach is doomed to fail (Scholten & Nispen, 2015).Thus, the European Union (EU) established the 'Common European Asylum System' (CEAS) as a legislative framework for all member states to introduce specific guidelines for refugees and asylum seekers. The CEAS regulates and sets common standards for international protection and develops mutual concepts and criteria to achieve harmonization concerning the interpretation and application of asylum law among all member states. Compared to other regional asylum systems (within the African Union or in Central and Latin America), the CEAS is unique in regulating "*both procedural and substantive matters for international protection from entry into a Member State until final determination of protection status*" (European Asylum Support Office , 2016, p. 13). The objective of this thesis is to combine the findings of previous research in order to find out how the 'crisis' in 2015 influenced policy development and changed the Common European Asylum System. This 'crisis' has been framed by mass media news coverage and labelled as a European 'refugee crisis' or 'migrant crisis', while the second term 'migrant' refers to all people on the move who have to finish the legal process of an asylum application. Both terms tend to individualise 'crisis' and relocate 'crisis' in the person of the *"figurative migrant or refugee, as if s/he is the carrier of a disease called "crisis", and thus carries the contagion of "crisis" wherever s/he may go"* (New Keywords Collective, 2016, p. 20)*.* The doubling of the asylum applications was only the trigger for the crisis, not the root cause. The increase of applications highlighted the dysfunctionalities, lacks and problems of the CEAS (Niemann & Zaun, 2018). Hence, instead of the term 'refugee crisis', 'migrant crisis' or 'migration crisis', the term 'CEAS crisis' or 'crisis of the CEAS' is used in this thesis.

In 2015, more than 1.2 million asylum applications were submitted in the European Union, which is more than double compared to 2014. The vast majority of people used the naval routes to reach the EU. According to *Medicins Sans Frontiers* (2018) more than 3409 people drowned in the Mediterranean Sea in 2014, and 3771 people died in 2015. The rise in all these numbers was defined by political actors as 'crisis' and appropriate governing solutions were needed to be found (Ondřej, Mosneaga, & Walter, 2018). The agenda setting process and the policy development are the focal point of this thesis, so the Advocacy Coalition Framework (ACF) sets the scene. The ACF *"is a framework of the policy process […] to deal with "wicked" problems— those involving substantial goal conflicts, important technical disputes, and multiple actors from several levels of government"* (Sabatier, Weible, 2007, p.189). The role of policy development and change in situations of 'crisis' – in connection with debatable or wicked policy problems – are in the centre of this thesis. Thus, the analysis encompasses involvement and reactions of EU actors in asylum policy making triggered by the CEAS crisis in 2015.

2. Research interest and structure

The topic of this thesis was inspired by the research approach of Ripoll Servent and Trauner (2014), who explored whether the empowerment of the EU's supranational institutions affected the progress of EU asylum law, concluding that the 'policy core' has upheld a high degree of continuity – and therefore, it takes up to their findings. They operationalised their research with the Advocacy Coalition Framework for evaluating policy change over a longitudinal analysis. The application of the ACF sets the theoretical framework for this thesis too because the ACF not only highlights what has altered, it also emphasises how policy change has been initiated or policy stability has been sustained. In contrast to Ripoll Servent and Trauner, this thesis centres crises as a trigger for change. Therefore, the research question reads as follows:

How did the CEAS crisis in 2015 influence policy change within the Common European Asylum System?

Inspired by Falkner (2016) and Trauner (2016), the de-stabilising effects of shocks play an important role since they reallocate political resources and question policy beliefs. According to Sabatier and Weible (2007), those de-stabilising effects will, *"with a high probability, work at the expense of the dominant coalition and confirm policy core beliefs of the minority advocacy coalition"* (Falkner, 2016, p. 221). The ACF implies two forms of change: minor policy changes (secondary aspects, meaning that specific instruments in a subsystem are changing) and major policy changes (policy core beliefs, meaning that the core of the policy – which is the groundwork for the coalition building – changes). This master thesis examines the historic development of the CEAS and its policy core, different advocacy coalitions (based on certain policy core beliefs) over time before the CEAS crisis in 2015 and then analyses the legal response to the CEAS crisis with a focus on the Dublin System and the emergency and permanent relocation schemes. It aims to answer the questions what the different power structures pursue, which coalitions are formed over time and after the crisis based on policy core beliefs; and what the outcome of the negotiations was.

The methodology is a literature research for the three important time-gaps from 1999 to 2019 combined with a short ACF analysis for each relevant period. Analysing change includes evaluating the past, the 'new' status quo and to some extent probable future scenarios. Additionally, for the years 2015 to 2019 (with a main focus until 2017, because the main crisis period is academically defined between these two years) a more detailed policy analysis through the ACF aims to answer the research question. In addition to the analysis of the formation of the coalitions and the negotiations, the development of soft and hard law will be examined to provide a more comprehensive picture of policy change. Following this, the application of the ACF also touches the question if more or less integration within the CEAS happened over time.

With reference to the state of research, following Trauner (2016), most of the recent research emphasises the development and transformations of national asylum systems due to Europeanisation (e.g., Guild, 2006; Lavenex, 2001; Toshkov & de Haan, 2013), European decision-making dynamics and subject matter of EU asylum law (e.g., Kaunert & Léonard, 2012; Ripoll Servent & Trauner, 2014; Zaun, 2015), the part of the Union in the externalisation of asylum law including the obligation of protecting refugees (e.g., Andrijasevic, 2010; Gammeltoft-Hansen, 2007; Klepp, 2010) and the dispute concerning 'burden-sharing' and solidarity within the Union (e.g., Bendel, 2015; Thielemann & Armstrong, 2013; Ucarer, 2006) (Trauner, 2016). Additionally, several scientific contributions have been published about the developments of policy analysis, leadership in times of crisis and crisis management; instead, in relation to the crisis of the CEAS, it is according to Scholten and Nispen (2015) still *"very much a tabula rasa"*. Consequently, Scholten and Nispen (2015) dealt with the role of policy analysis in combination with the perceived 'migration crisis' – *"as not only one of the central challenges or "social questions" of these times throughout Europe, but also a crisis in which the role of policy research in general and policy analysis in particular has come to be at stake"* (Scholten & Nispen, 2015, p. 1)*.*

This thesis seeks to connect with published research and embed the crisis response – the emergency relocation mechanism and the revision of the Dublin System – of the European institutions to the CEAS crisis into a comprehensive and multifaceted picture of policy development and European law. Many scholars addressed the EU crisis response, mixing up different policy fields and acts of law. In contrast to that, I decided to specify and go into further detail during the analysis. Most of the prominent topics in this context are the performance of Frontex and the EU-Turkey Deal, but the (emergency) relocation mechanism and the proposal of the Dublin revision are not that often analysed. A reason for this could be the failure of the policy – in contrast to the strengthening of Frontex. Nevertheless, the non-adoption of a policy is as important as the adoption and therefore, the (emergency) relocation schemes and the proposed amendments to the Dublin System are in the centre of this thesis.

3. Defining and discussing the key terms

3.1. Asylum and refugee

The European Migration Network (EMN) defined the term asylum as *"a form of protection given by a State on its territory, based on the principle of non-refoulement and internationally or nationally recognised refugee rights and which is granted to a person who is unable to seek protection in their country of citizenship and / or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"* (European Commission, n.d.-a)*.* Asylum refers to the protection of a person from

a foreign country, when his or her home country persecutes them based on one or more of several grounds. It differs from voluntary migration but it is still not the same as forced migration that is caused by natural or environmental disasters, nuclear accidents etc. The EU distinguishes between two additional forms of protection for people who do not qualify for asylum: subsidiary and temporary protection (European Migration Network, 2018). The EU strives to establish a common policy on asylum for all three forms of protection (European Parliament, 2020a).

The European Union defines a refugee as follows: "*either a third-country national who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Art. 12 (Exclusion) of Directive 2011/95/EU (Recast Qualification Directive) does not apply*" (European Commission, n.d.-b). The term 'well-founded fear' is not specified in more detail. This shifts power to authorities to decide about the subjective element of fear. Another key term is 'asylum procedure', which is the main subject of the CEAS, starting from the application process to the final decision of entitlement of asylum. The key principle is the non-refoulement, which guarantees that no refugee may be returned to a country where their lives or freedom would be threatened by persecution related to the rights to asylum in the Geneva Convention and obliges the states to ensure fair procedures (European Migration Network, 2018). Additionally, states are not allowed to punish refugees for illegal border crossings (Cherubini, 2016).

3.2. The Common European Asylum System (CEAS)

This paragraph sums up the current state of development of the CEAS. The CEAS guarantees that asylum is granted to people fleeing persecution or serious harm. Once a person crosses the external EU border illegally and cannot return safely to another country, he or she needs to make their asylum application. Due to the Dublin System, the country of first entry is responsible. The Eurodac fingerprint database provides assistance for the examination of the responsible state. The Reception Condition Directive applies during the asylum procedure and determines minimum material reception conditions e.g., housing and food. The Asylum Procedures Directive needs to be followed to decide if a person qualifies for asylum in the EU. The Qualification Directive sets the scene for the requirements. If asylum is approved, the Qualification Directive guarantees certain rights, for example obtaining a residence permit, health care, access to the labour market. But if it is not granted, the applicants can appeal to court and if this does not result in new circumstances, they need to leave the EU or are 'returned'. The main issue is that harmonization is not as far as it should be due to the already adopted directives

because the member states interpret the standards differently. This generates a variation of acceptance rates throughout the Union (European Commission, 2014). The figures below illustrate the functioning of the CEAS and the main legislation in the framework. These figures sum up the essential information. The CEAS framework is essential to understand the next chapters about the historic evolution of the framework, the Dublin Regulation and its proposed amendments.
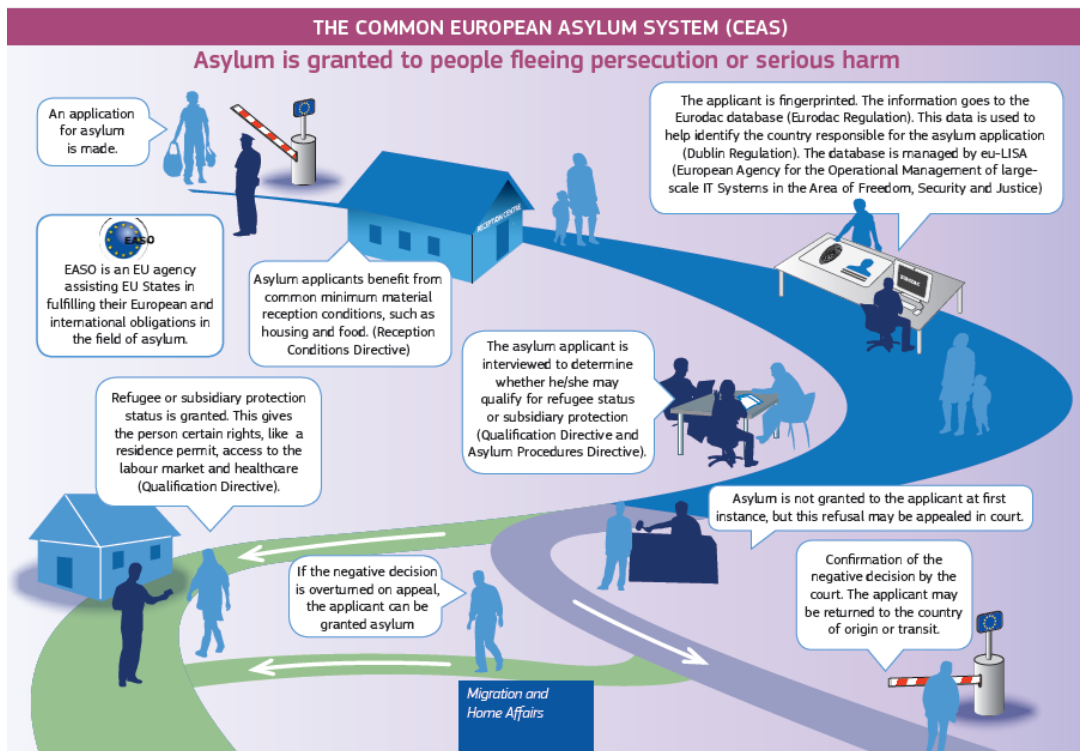

Figure 1: Factsheet: The Common European Asylum System (European Commission, n.d.-d)
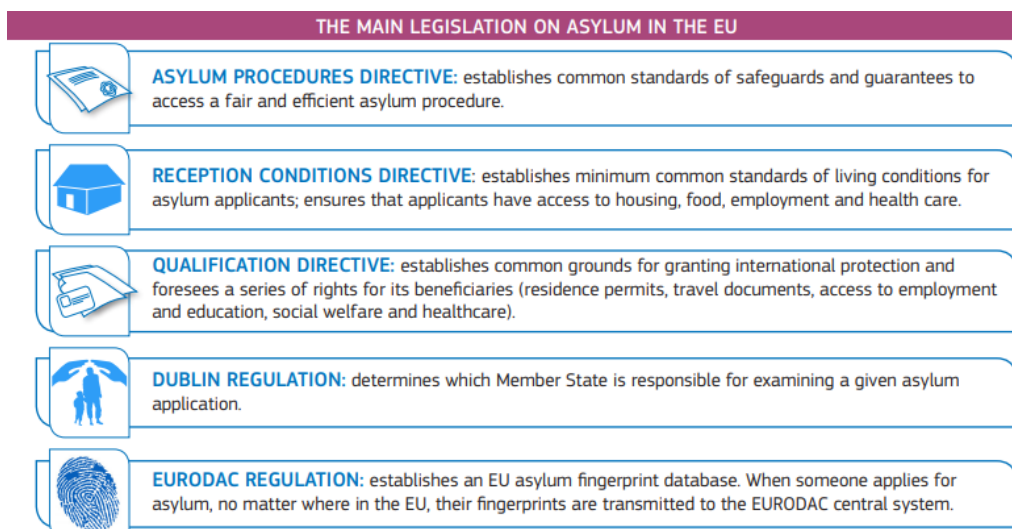

Figure 2: Factsheet: The Common European Asylum System (European Commission, n.d.-d)

3.3. The Dublin Regulation

The main focus of this thesis is the CEAS framework and especially the Dublin System. The Dublin Regulation established "*criteria and mechanisms for determining which EU Member State is responsible for examining an asylum application".* The Dublin System does not aim at guaranteeing future-oriented sharing responsibilities for applicants within the European Union. The CEAS crisis in 2015 emphasised these circumstances. The core principle of Dublin refers to the obligation to evaluate an asylum claim by the member state, which played the main part in the applicant's entry to the EU – in most cases, the member state of first entry. This system results in an unequal distribution of responsibility because the vast majority of asylum-seekers are applying in a few member states only. Due to current migration patterns, the Commission presented new suggestions for a reform of the Dublin System (European Commission, n.d.-c). In 2010, the European Commission (EC) has already launched a study on intra-EU relocation mechanisms. The European Parliament (EP) joined the coalition with the Commission on establishing permanent relocation mechanisms. However, the member states did not assent this proposal before the 'crisis'. The EU institutions agreed to a temporary pilot project of voluntary intra-EU-relocation (EUREMA), where 583 asylum seekers were relocated from Malta to other EU member states in 2011 and 2012 (Trauner, 2016).

The core of the Dublin principle was established when the integration process started and has never been greatly modified, but it has just been revised. The current system is based on the Dublin III convention (2013). It is the third-generation instrument defining the responsible member state. "*It poses obligations on Member States responsible under this Regulation to 'take charge' if an applicant whose application is under examination and who made an application in another Member State or who are on the territory of another Member State without residence document (Art. 18)"* (European Asylum Support Office , 2016, p. 34). The discretionary clauses are also pivotal. The 'sovereignty clause' (Art. 17(1)) of the Dublin Regulation states that a member state needs to examine any application which is submitted, particularly for humanitarian or compassionate reasons. The 'humanitarian clause' (Art. 17(2)), clarifies that member states may approve a transfer of accountability to a state that would not have the authority under the criteria to maintain or unite them with family relations (Maiani, 2017).

Bendel wrote in 2015 that after *"a five-year long negotiation marathon among the Member States, the Commission and the Parliament on the recast of the Common European Asylum System, the Member States are today less than ever inclined to accept common regulations*" (Bendel, 2015, p. 26). This already gives a hint why the policy core of the CEAS remained stable until and also after the crisis – even if it does not work fairly, efficiently and it jeopardises refugees' rights as outlined in the ECRE Report (European Council on Refugees and Exiles) in 2013 (Garcés-Mascarñas, 2015). Kasparek argues that the Dublin System is "*not about the prevention or*

reversal of mobility – […] but rather the disenfranchisement of migratory populations and social practices of differential inclusion" (Kasparek, 2016, p. 67). Unfortunately, the Dublin Convention was not designed to handle '*mass-influxes*' of refugees; the member states with external borders are more accountable to deal with the applications, than member states in the heart of Europe. The southern member states like Greece and Italy were the first country of entry for many refugees and this system provoked a disproportionate pressure on those member states (Geddes, 2018; Bendel, 2015). Moreover, several failed attempts aimed to harmonize the conditions under which asylum-seekers are received and asylum procedures. The differences are a major issue and troublesome from a human rights point of view because they promote 'asylum shopping' and secondary movements in order to reach other first countries of arrival. During the CEAS crisis in 2015, the endogenous deficiencies resulted in a stop of registering refugees by the frontline member states, ignoring refugees who vanish in illegality or move to other EU countries (Trauner, 2016; Schimmelfennig, 2018a). Moreover, the Dublin Regulation entails an Exceptional Clause for Early Warning, Preparedness and Crisis Management (Art. 33) but it was not invoked during the CEAS crisis in 2015 and 2016 (Brandl, 2017).

Additionally, to the point of criticism that the Dublin Regulation imposes the 'burden' on the frontline member states, it also does not *"properly take into account fundamental rights of the persons concerned"* (Progin-Theuerkauf, 2017, p. 63) and it ignores the refugee's wishes and preferences. Moreover, it is very expensive because it incurs many indirect (e.g., accommodation, healthcare, return fees) and direct (e.g., staff, IT systems like Eurodac) costs (Davis K. , 2020). This thesis explores if the proposals and debate varied through and after the crisis of the CEAS in 2015 regarding an amended Dublin Regulation or a new common system.

4. The Advocacy Coalition Framework

The Advocacy Coalition Framework (ACF), developed by Sabatier and Jenkins-Smith (1993), tackles the policy process to deal with problems, which involve substantial goal conflicts, technical disputes and many actors from various government levels. Originally, they published the ACF in 1988 and revised it in 1993 based on six case studies. The framework aims to reduce the complexity of the world of public policy and sheds light on the agenda setting and decision-making stage of the policy process (Weible, Sabatier, & McQueen, 2009).
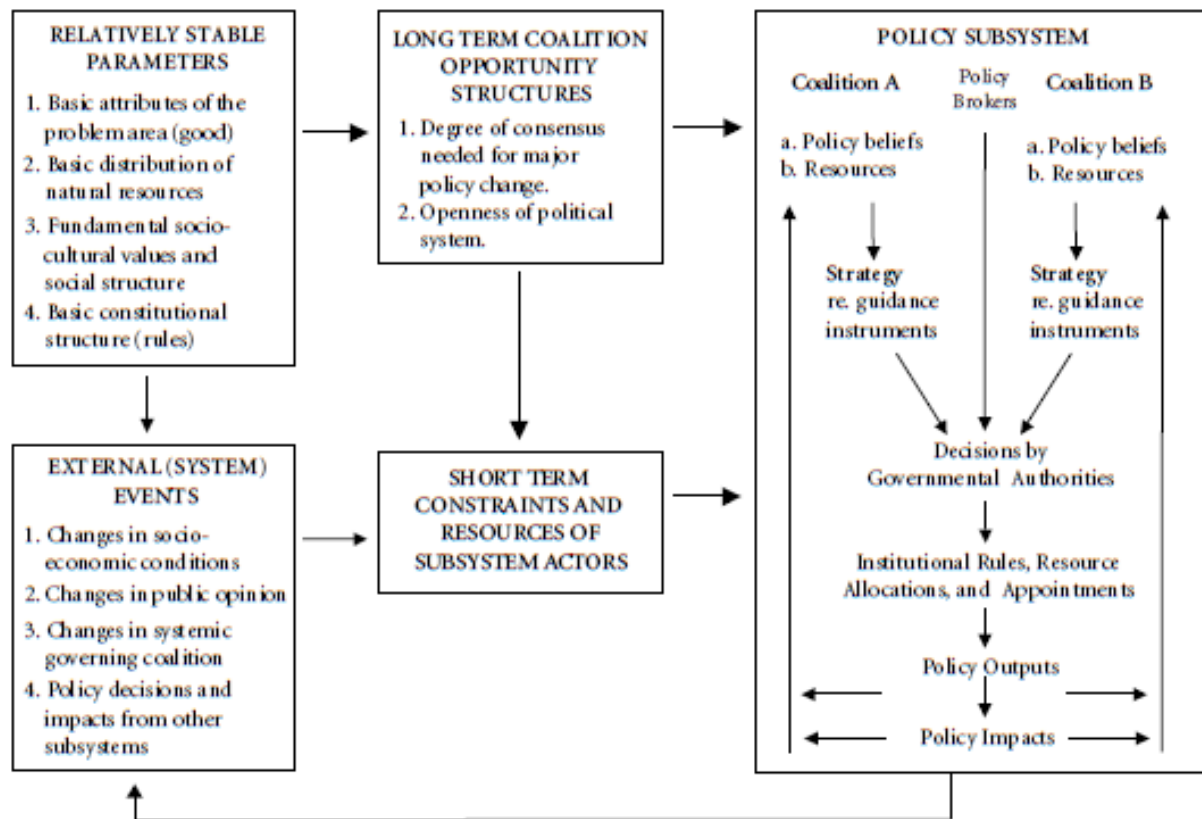
FIGURE 7.2   2005 Diagram of the Advocacy Coalition Framework

Figure 3: Advocacy Coalition Framework (Sabatier & Weible, 2007, p. 202)

The ACF is based on three basic assumptions. The first 'foundation stone' is on the micro-level and relates to the model of the individual, which originated from social psychology. Their activities are premised on their own pre-existing preferences, values and normative beliefs. Beliefs can be characterised as a 'motor' for political behaviour (Sabatier, 1998). The second one refers to the macro level of the policy process, where those activities take place in a specific subsystem. The framework views the policy process as very complex, so that actors need to be specialised to gain access to influence the policy process. Within a policy subsystem, specialists are most likely to participate in the policy-making process but dynamics in the wide-ranging political and socioeconomic system have an impact on their attitudes and actions. Thirdly, on the meso-level, the following assumption is also important for understanding the framework: Subsuming actors into 'advocacy coalitions' is the best option to cope with the diversity and variety of actors in a subsystem. The aggregation of coalitions refers to various preferences of multiple actors – actors with the same preferences build a coalition to unravel the complexity of policy processes. The coalitions act as larger units within the process and are relatively stable because they share the same beliefs even if they consist of various actors, like governmental authorities and private organisations (Sabatier & Weible, 2007). These three corner stones of the framework influence the dependent variables – belief and policy change – through two critical paths: policy-oriented

learning and external shocks. In order to investigate a process completely and fully, the ACF usually considers a period of at least ten years.

4.1. Policy change through external shocks (or focusing events)

Due to the stable structures in most policy areas, there are usually only small amendments. A *minor policy change* is limited to the operational level of a policy field and typically triggers the introduction of new instruments or programmes. These are always based on the most basic preferences of the actors involved in the political process. Besides, there is also the possibility of a *major policy change*, which enables pioneering institutional modifications in the subsystem. According to the ACF, major policy change requires a transformation of the fundamental preferences of political actors. (Sabatier & Weible, 2007). In the ACF, major political change is primarily understood as the outcome of *"significant perturbations external to the subsystem"* (Sabatier & Jenkins-Smith, 1993, p. 34) or, put differently, as the consequence of a massive external shock to a policy field. Four possible events could bring about such changes: Major socio-economic difficulties, shifts in public opinion, changes in systemic governing coalitions and policy decisions and impacts of other subsystems. External shocks could shift the agenda setting, the focal point of public awareness and catch the eye of important decision-makers. The reallocation of resources or the opening and closing venues within a policy system have the most significant leverage. This could cause a replacement of the current dominant coalition. Additionally, external shocks might shape aspects of the policy core beliefs of an advocacy coalition. Another potential trigger for major policy change is the concept of internal shocks acting on the subsystem, but there the trigger appears inside the policy field and not outside. Moreover, policy-learning effects can have a lasting effect on preferences by providing new information to different actors. Finally, it is also possible that the negotiation of contracts to settle a dispute between two previously disparate coalitions shifts their preferences (Sabatier & Weible, 2007).

The concept of external shocks is similar to Birkland's concept of *focusing events*. Birkland (1997/1998) describes a focusing event as sudden, unforeseen, and rare and that it could cause great harm to people and the environment. Political actors and the public experiences them simultaneously – there is no advanced knowledge for any actors involved. Examples include earthquakes, hurricanes, oil disasters or nuclear reactor accidents. If a focussing event happens, four elements within a present policy could transition: the dominant issue on top of the political agenda, the dominant problems in a policy field, new groups could be mobilised, and groups could either suppress or promote the new issue. These elements are similar to the four elements by Sabatier and Jenkins-Smith: a sudden event attracts attention and opinions, values, beliefs could alter as a result, which could manifest itself in a change of policy (Kammermann & Strotz, 2014).

To sum up, external shocks and focusing events have the potential to influence political structures and thus modify the present dominant policy through the new preferences of political actors, their resources or through the participants newly involved in the political process. However, the ACF maintains that an external shock is not enough to bring major policy change, because the actors must use this shock wisely with great skill in order to shift the balance. Many scholars, like McCombs and Shaw (1972) have proven the effectiveness of agenda setting and priming aspects (Kammermann & Strotz, 2014).

4.2. Advocacy coalitions within subsystems

The primary examination unit of the ACF is a so-called subsystem, which is conceptualised by a functional or substantive dimension, like a specific policy field and by a territorial one. Sabatier and Jenkins elucidated a policy subsystem by "a *set of participants who regard themselves as a semi-autonomous community who share an expertise in a policy domain and who have sought to influence public policy in that domain for an extended period"* and by *"agencies, interest groups and research institutions that have had subunits specialising in that topic for an extended period"* (Sabatier & Weible, 2007 , p. 192). A subsystem is a policy area, which is separated from other areas based on the different content alignment. Not only legislators, agency officials and interest group leaders are policy participants, but also researchers, journalists and judicial officials who can intervene within the policy area. The scope of the subsystem is geographically limited and defined by a total number of participants. The participants acting within the subsystem are called actors and they are usually collective actors rather than individuals. The reason for this is that individuals very rarely command necessary resources to have a lasting effect on the political process on their own, as various political issues are very complex and they therefore team up to pool their resources. In addition to that, the ACF describes actors as having a limited rationality because they neither have unlimited time resources to process all information nor the capacity to do so (Sabatier & Weible, 2007).

The ACF presumes that actors strive to translate components of their belief system into policy before their opponents can do the same and for that reason, policy participants will seek allies with people who have the same policy core beliefs. Hence, coalitions are formed based on the actors' preferences and values on relevant issues within a subsystem and on their available resources. The structure of the existing coalitions allows majorities to emerge in the subsystem, which largely determine the output of the political system and can thus trigger small or large policy change (Sabatier & Weible, 2007). The cooperation in coalitions can take various forms, like discussing findings, working on various options, sharing positions, evaluating alternatives, exchanging financial resources, or jointly launching political campaigns as cooperation, as long as *"non-trivial coordinated activity between the various actors takes place over a longer period of*

time" (Sabatier, 1988, p. 139). Every coalition aims to assert its preferences in the political process and that is why they try to lobby other organisations, which are in control of the process. Another relevant aspect in this context is the free-rider problem; it is a problem of collective action that can arise in the use of common goods when economic agents obtain the benefit of a good for nothing in return. The ACF holds three explanations for overcoming this problem. Firstly, joining a coalition holds comparatively low transaction costs in contrast with other forms of collective behaviour. Second, the benefit one receives because of the participation is exaggerated, especially in high conflict situations. Thirdly, the level of coordination can also vary from strong (e.g., a common plan including the realisation) to weak (e.g., monitoring ally activities), which has lower costs and reduces the risk of free riding (Sabatier & Weible, 2007).

Since 1999, there have been some modifications to the framework, like the coalition opportunity structures, which mediate between the stable system parameters and external events within the subsystem. Those structures relate to enduing features of a polity that affect the resources and constraints of actors who operate within the subsystem. Sabatier and Weible borrowed two variables from Lijphart (1999): firstly, the degree of consensus needed for major policy change and secondly, the openness of the political system that is defined by the number of decision-making venues that any major policy proposal must go through and the accessibility of each venue (Sabatier & Weible, 2007).

4.3.   Belief systems and resources

As already mentioned above, all actors within a subsystem have their own preferences and values which affect their behaviour. The ACF divides these beliefs into three categories. The first one refers to the basic values of each actor, called *deep core beliefs*. They comprise very basic and general perceptions and beliefs that span all subsystems, like freedom or equality. What depicts this category is that the basic values are extremely difficult to amend, because they are rooted in our childhood socialisation or in the general purpose of an organisation. This category is not pivotal for the coalition building, but the second category – policy core beliefs – is already more decisive. In the ACF, actors form their coalitions in a subsystem based on their policy core beliefs to achieve their goals (Sabatier & Weible, 2007). Policy core beliefs are general perceptions as well as beliefs about a specific subsystem. Depending on the similarity of the policy core values, the more likely different actors are to build a coalition. This creates coalition structures in the subsystem, as actors with similar attitudes join together. If the policy core values adapt because of external shocks or focusing events, the coalition structure within the subsystem could alter. The reason for this is that the belief system of one actor may no longer be compatible with the one of the other coalition members. If this happens, the actor will leave the coalition to implement new beliefs in the subsystem (Sabatier & Weible, 2007).

Additionally, the ACF has another subcategory within this specific belief: p*olicy core policy preferences.* Those are normative beliefs that "*project an image of how the policy subsystem ought to be, provide the vision that guides coalition strategic behaviour and helps unite allies and divide opponents*" (Sabatier & Weible, 2007 , p. 195)*.* They can be translated into secondary beliefs, the third category, becoming policy preferences, which are related to specific instruments or proposals dealing with a subcomponent of a subsystem. Therefore, *"they might be the stickiest glue that binds coalitions together"* (Sabatier & Weible, 2007, p. 195*).* Moreover, policy core values have three key features: first, they are meaningful throughout the subsystem; secondly, they stand out from other issues in the subsystem; and thirdly, they have been the cause of conflicts between actors and coalitions in the subsystem over a long period. Merely external or internal shocks, which modify the situation in the subsystem in such a way that fundamental adjustments become necessary, can transform the policy core value (Sabatier, 1998).

As already mentioned, the third category are *secondary beliefs* (or *secondary aspects*); these are conceptualised as views and attitudes to a specific problem or instrument within the subsystem. They are rather narrow in scope and enhance a very specific aspect of a problem, which needs a solution. These secondary aspects are, in contrast to the other two categories, the ones which are most likely to change. Adjustment to specific problems or instruments are very common in the policy process, especially during the policy formulation phase. Changing them requires less verification and fewer arrangements within the subsystem, so it is easier (Sabatier, 1998). This is called policy-oriented learning, which is defined as "*relatively enduring alternations of thought or behavioral intentions that result from experience and/or new information and that are concerned with the attainment or revision of policy objectives*" (Sabatier & Jenkins-Smith, 1999, p. 123). Examples of secondary aspects include assessing the severity of a problem in a subsystem, decisions on budget allocation or public participation guidelines within a specific statute (Sabatier & Weible, 2007). The belief system of every actor or coalition consists of basic values, policy core values and secondary beliefs and it is dynamic. According to the ACF, different belief systems thus assess social developments from different perspectives, from which different preferences can be derived. These influence the behaviour of actors and coalitions in the political process (Sabatier, 1998). As already noted, two paths to reach major policy change are policy-oriented learning and external shocks or focusing events; however, there are also two alternative paths, namely internal shocks and negotiated arrangements (Sabatier & Weible, 2007).

Moreover, coalitions are also formed based on the resources of individual actors; they weigh out whether they can derive a positive benefit from combining the resources or not. Exchanging the resources is expressed in the cooperation between actors. Basic trust between the actors is required as a precondition for the cooperation between likeminded actors within the subsystem. Additionally, in the ACF, the more resources an actor or a coalition has, the higher their impact is

on influencing the policy process. According to Sabatier and Weible, there are many different types of *coalition resources* like, having formal authority to make policy decision; being recognized as influential in the subsystem (public opinion); having information that is not accessible to other actors and coalitions; having access to a large number of personnel (mobilizable troops); having financial and other material resources; having strategic and charismatic leadership; and the centrality of actors within and between coalitions (Sabatier & Weible, 2007).

4.4. Applicability of the ACF for analysing the European Union's policy process

Originally, the authors developed the ACF within the American political, societal, cultural and social system, but Sabatier analysed the applicability and concluded that the ACF is generally useful for detecting or understanding important variables and relationships. The ACF applies well to complex relational structures, like the European Institutions. The Commission, the Court of Justice (ECJ), the Council of Ministers and the European Parliament are increasingly replacing national institutions as "*the principal loci of policy change*" (Sabatier, 1998, p. 121). For studying EU policy processes, the ACF has many advantages. Regarding the identification of coalitions that consist of administrative agency officials, interest group leaders and, researchers from different countries, several scholars had no difficulty within the ACF. In addition to that, the ACF conceptualises coalitions as aiming to maximize their advantages by 'venue shopping' among levels of government and on the European level. Venue shopping is defined as "*the idea that policy-makers, when encountering obstacles in their traditional policy venue, tend to seek new venues for policy-making that are more amenable to their preferences and goals*" (Kaunert & Léonard, 2012, p. 1397). Third, the framework clearly distinguished between major (policy core) and minor (secondary aspects) policy change.

Moreover, the ACF's recognition that many subsystems are often nested within each other helps to explain the *"bewildering array of policy initiatives at different levels of government occurring in many policy domains"* (Sabatier, 1998, p. 121). It clarifies that the levels are connected and that a minor change on the European level may cause a policy core change on the national level in specific member states. Furthermore, it is believed that the ongoing stress on explicit indicators of beliefs and levels of co-ordinated movement among potential coalition members will urge analysts to deliberately report the quantity of coalitions and the membership of each. The ACF's thoughtfulness concerning subsystem advancement to the cycle by which beginning subsystems become mature would have all the characteristics of being especially applicable to a circumstance as unique and dynamic as the contemporary EU (Sabatier, 1998). Therefore, this thesis applies the ACF to the EU's policy process within the 'Common European Asylum System' to answer the research question.

For the sake of completeness, there are many aspects of the ACF, which have been criticised, like that, it already states the obvious and that it is constantly revised and modified (even if the basic principles have not been reconfigured since 1988). Another point of criticism is that it does not deal with the collective action problem and that it does not have a clear conceptualised and operationalised institutional set of variables that structure the coalition formation and behaviour. For example, this could lead to the result that some applications simply put emphasis on the opposing sides of a political debate, while the scope of the ACF is more far-reaching (Sabatier & Weible, 2007).

5. Operationalisation of the Advocacy Coalition Framework

Due to the scope of my research question, I will not pay attention to every variable and parameter in detail, which is comprised in the Advocacy Coalition Framework. The relatively stable parameters and all the parameters of the resources will not be discussed. Policy change is of primary importance. The necessary variables of the framework are the ones which refer to policy change triggered through a focusing event.

Focusing event ➜ change of belief system, resources and actors ➜ change of coalition opportunity structures ➜ policy change?

Figure 4: Policy change (Own compilation, 2020)

Sabatier, Weible and McQueen (2009) evaluated several applications of the ACF (Barke, 1993; Bischoff, 2001; Green & Houlihan, 2004; Greenaway & Jordan, 1998; Mawhinney, 1993), which discussed the interplay between external perturbations and changes within the subsystem. They also discussed the work of other scholars (Dudley & Richardson, 1999), who described for example "*how changes in beliefs by one coalition in support of free markets altered the way it framed external events, leading eventually to major policy change*" or who concluded that the lack of proficient coalition members was a reason for the absence of major policy change after an external shock (Ameringer, 2002). Some researchers were concerned with the shifts in coalition structure or minor policy changes (Burnett & Davis, 2002; Carvalho, 2001; Davis & Davis, 1988). Based on their findings, the following conclusions can be drawn. Firstly, the impact of external shocks cannot be distinguished from internal subsystem issues. Secondly, there is much to learn about the intervening steps between a focusing event and major policy change. Thirdly, changes in coalition membership, strategies, beliefs and minor policy changes are among the other subsystem effects generated by external shocks (Weible, Sabatier, & McQueen, 2009).

Operationalisation of the Advocacy Coalition Framework

Variables	Definitions	Values	Indicators
Advocacy Coalitions	Powerful groups that influence the policy process	Preferences of the groups	What is the aim of various power structures in the negotiation process?
External Shock ➔ Focusing Event	Events and circumstances which are a trigger for policy change	Circumstances	What circumstances led to the policy outcome?
Policy Learning	Learning based on new information and previous experience of cooperation or failed policies	Positive / negative	What was the previous situation within the CEAS? Did new circumstances play a role for the new proposals?
Belief Systems (dependent on external shocks and policy learning)	Actors' preferences and values	Deep Core Beliefs (basic values), Policy Core Beliefs (to form coalitions to achieve respective goals within a subsystem), Secondary Aspects (views to a specific problem or to a concrete instrument within a subsystem)	What does the belief system of the main actors/coalitions look like? Did the external shock lead to a change within the belief system?
Outcome (= policy change) (dependent on external shocks and policy learning)	Result of the policy negotiations within the CEAS framework regarding a reform of the Dublin System and a relocation scheme	Agreement / NO Agreement	Did the external shock lead to a policy change? What could be 'gained and lost' from this policy change?

Table 1: Operationalisation of the ACF I (Own compilation, 2020)

The European Union is active in 22 policy fields and for this thesis, the field 'Justice and Fundamental Rights' is pivotal. On their homepage, the EU indicates that "EU *countries are also working to develop a coherent EU immigration policy that takes advantage of the opportunities offered by legal immigration, while tackling the challenges of irregular immigration. Work is ongoing to improve security through better external border controls, while making it easier for those with a right to enter the EU to do so"* (European Union, 2020). Within this policy field, to define the subsystem one needs to look at the EU policies, in this case the *EU migration policy*,

which includes another policy, the *reform of EU asylum rules* (European Council, Council of the European Union, reviewed 2020). Hence, the subsystem for the analysis is the EU asylum policy, which aims to "*offer appropriate status to any third-country national requiring international protection in one of the Member States and ensure compliance with the principle of non-refoulement. To this end, the Union is striving to develop a Common European Asylum System*" (European Parliament, 2020a).

According to the ACF, as already described above, focusing events in a subsystem can induce (major) policy change by shifting and increasing resources, tipping the power of coalitions, and changing beliefs. Such a policy change is only possible if shifts in the coalition structure have taken place beforehand, which means that external shocks are a necessary, but not sufficient, condition for major policy change. The following assumptions, deducted from the framework, will be analysed in relation to the CEAS and crisis of the CEAS. In addition to that, a more specific hypothesis will be examined based on the application of the ACF framework.

- External shocks may lead to a change of the belief system, namely policy core beliefs and secondary aspects, within the subsystem.
- External shocks may lead to a major or minor policy change within the subsystem.
- It is unlikely that the policy core beliefs of a political programme will be changed as long as the dominant advocacy coalition of the subsystem that created the programme remains in power unless change is forced upon it by a superior political entity (Sabatier & Jenkins-Smith, 1993).

Hypothesis:

- Due to a lack of common policy core beliefs, no uniform advocacy coalition was formed in the subsystem of the CEAS to achieve policy change.

Variables	Operationalisation
Subsystem	EU asylum policy
External shock/focussing event	Crisis of the CEAS 2015 ('migration crisis')
Main actors operating within the subsystem	European Parliament, European Commission (representing the 'European interest') vs. Council of the European Union (representing the interest of the member states) and the member states. Public administration units, especially interest groups, business enterprises, subnational commissions, scientific committees and the media, are beyond the scope of analysis in this thesis.
Preferences, values and beliefs	Policy Core Beliefs: Solidarity, responsibility-sharing, more integration regarding a Common European Asylum System vs. non-solidarity responsibility-shifting, less integration and more national sovereignty

	The *Policy Core Beliefs* can be transferred into the actual policy core of the Dublin System, because it represents the non-solidarity approach and the revision of Dublin represents the solidarity approach
	Secondary aspects: pro/contra emergency relocation
Degree of consensus needed for major policy change	Informal Unanimity (Officially: qualified majority in the Council)
	(EP: absolute/simple majority vote)
	(Ordinary legislative procedure)
Openness of the political system	Three main actors on EU level: European Commission (EC), European Parliament (EP) and the Council of the European Union (Council)
Resources	Focus on centrality of actors

Table 2: Operationalisation of the ACF II (Own compilation, 2020)

6. Historic development of the Common European Asylum System

The *European Acquis Communautaire on Asylum* developed in three phases. The first phase started in 1999 and ended in 2005, the second phase then continued until 2013 and the third phase is considered as a 'post-crisis' phase in the wake of 2015. Asylum policy is an example of a process where a core national policy became supranational. With reference to the research question, legal migration, fighting root causes and border management are not examined in detail, even if all policies are important for the EU's migration policy.

From 1948 until 1967, the international community defined standards for international protection in the aftermaths of World War II. The United Nation adopted the non-binding Universal Declaration of Human Rights (1948), the Geneva Convention (1949) and its Protocol (1967). The Geneva Convention, which lays out key principles, was signed by all member states at the time and constituted to the core foundation of the EU's asylum policy and serves as a reference for future arrangements. Moreover, the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), adopted by the Council of Europe, is also important in this context because it relates to torture, inhumane punishment and the death penalty and it states the principle of *par ricochet*, similar to the non-refoulement principle, that obliges states to provide the right to a fair risk evaluation. Another main document is the Charta of Fundamental Rights of the European Union (signed in 2000), which is legally binding since the Treaty of Lisbon. It anchored the right to claim asylum (Article 18) and the principle of non-refoulement (Article 19) (Cherubini, 2016; Cellini, 2017). To put it briefly, this pre-phase of development is characterised by *minimal immigration policy involvement* on a supranational level, but the main guidelines and principles evolved on an international level and as a result also in Europe (Ondřej, Mosneaga, & Walter, 2018).

From 1985 to 1998 asylum policy slowly became thematised on the European agenda even if in the beginning, the European Economic Community put emphasis on economic issues and overlooked asylum policies, because they were or still are a national core issue, referring to the territory and borders of a state. Freedom of movement for the citizens of the European Community and their workforce was one of the primary liberties, which was pivotal for the development of the economy and social progress. The intra-union mobility of workforce was the drive for European integration in other policy fields (Ondřej, Mosneaga, & Walter, 2018). While the European Commission was working on the competition of the single market, it published a White Paper (1985) concerning the end of internal border controls and subsequently, five member states signed the first Schengen Agreement. The Schengen Agreement targeted abolishing internal border controls while reinforcing external border controls by introducing the Schengen Information System (SIS). This was the first supranational European police database, "*allowing an exchange of information about third-country citizens, most notably migrants and refugees*" (Kasparek, 2016, p. 61). This was the first time an economic issue was directly linked to immigration because member states would need to harmonize certain laws in other policy fields. Therefore, Schengen is noteworthy because states agreed to transfer a national core responsibility, that is border control, to the supranational level (Münch, 2018; Huber, 2018). The conceptualisation of Schengen made it necessary for the member states to work on a common policy on migration. It was presumed that a failure to do so would engender the movement of asylum-seekers who choose the destination which offers the most generous asylum policies, or make a decision based on personal reasons (European Asylum Support Office , 2016). Schengen already aims to fight abuse of asylum (applying in several member states) through determining which state is responsible for the application through proximity and first-entry. The development during the 1990s set the stage for a restrictive setup, which neglected 'burden-sharing' (Uçarer, 2006).

Additionally, intergovernmental cooperation in the field of security issues increased between ministers of the interior in the Council to compensate for the non-existence of internal border checks in the Trevi-Group and Ad-Hoc Groups on Immigration (Münch, 2018). The Palma document (1989) made clear that tackling asylum abuse was the main goal. Hence, drafts for conventions dealing with the responsibility for asylum applications resulted in the first Dublin Convention. This Convention from 1990/1997, drawn up by the European Commission, was rather supranational than intergovernmental - in contrast to Schengen - and it constitutes the key principle of asylum. The first country an asylum seeker enters is the one which is responsible for the application procedure. Additionally, since the Dublin Convention, member states exchange information of asylum applications in order to prevent 'asylum shopping', asylum-seekers submitting their applications to member states with the most attractive benefits (Huber, 2018; Cellini, 2017; Davis K. , 2020). In the light of the collapse of the communist regimes in Eastern

Europe and the conflicts in the Balkans, there was increasing recognition that asylum and migration should be included in the EU framework (European Asylum Support Office , 2016). Simultaneously, the Union introduced limitations on legal immigration and refugees, and following Geddes (2000), Europe was referred to a *"besieged fortress"* (Ondřej, Mosneaga, & Walter, 2018, p. 67).

The period of *unchecked or informal intergovernmentalism* ended in 1992, because the Treaty on the European Union (TEU, Maastricht Treaty) was signed and extended the supranational competences with two additional pillars to the EC's formal competences (Münch, 2018; Ondřej, Mosneaga, & Walter, 2018). The TEU institutionalised the work of the Trevi-Group in the third pillar, which was then called Cooperation in Justice and Home Affairs (JHA). Only the policy fields of the first pillar (European Communities) were subjected to the community method while the other two pillars (JHA and "Common Foreign and Security Policy" - CFSP) were still completely intergovernmental. Asylum was part of the third pillar and since then, migration was on the agenda on the European level as a common interest and member states started to shape and control migration policies as they were the most powerful actors in charge. The Commission had the possibility to propose policies, but the Council needed to agree unanimously (Huber, 2018). The Council consented to minimum procedural standards, attempted rapprochement for 'burden-sharing' in case of a temporary rise of numbers and financial assistance and dactyloscopic data (fingerprints) registration was introduced (1993) (Ondřej, Mosneaga, & Walter, 2018). The London resolution, which defined the criteria for safe third countries and safe countries of origin, was passed (Cherubini, 2016; Ondřej, Mosneaga, & Walter, 2018). Furthermore, it is interesting to point out that Germany already proposed unsuccessfully a distribution key in 1994 (Zaun, 2018). To sum up, the CEAS was established, it being recognised that without internal borders, asylum needed to be harmonized on a European level. Even if asylum policy became part of the treaties, the supranational influence on asylum policy in the member states remained marginal and differed a lot between the member states (European Asylum Support Office , 2016). Thus, this stage can be described as "*formal intergovernmental cooperation*" (Ondřej, Mosneaga, & Walter, 2018, p. 69).

6.1. The first phase of the CEAS 1999-2005

Characterised by intergovernmentalism and communitarization

With the adoption of the Treaty of Amsterdam (1997/1999), the first phase of the development of asylum policy began, because it constituted the legal basis for the foundation of the CEAS and elucidated its legal fundamental cornerstones (European Asylum Support Office , 2016). The weakness of the intergovernmental procedures within the JHA were improved by replacing it with the Area of Freedom, Security and Justice (AFSJ). Additionally, the Treaty of

Amsterdam shifted the asylum policy to the first pillar to communitarize asylum, but it set out a five years transition period to implement certain measures (European Asylum Support Office, 2016; Huber, 2018). During this transition period, a certain governance mode applied, where the Parliament held a consultant position, the Commission had no exclusive right for agenda setting, the Council had the decision-making power with unanimous votes and the Court of Justice did not possess any duties. However, even if the Treaty of Amsterdam provided the legal basis, a concept of a common system or a proposal was not included (Ripoll Servent & Trauner, 2014).

In 1999, the Tampere Conclusions made references to a 'Common European Asylum System' for the first time. In the short term, in accordance with the Conclusions, the CEAS was to include: which state was responsible for the application; common standards for a just and well-organized procedure; common minimum conditions of reception; and, an approximation of rules on the recognition and content of the refugee status. In addition to that, the Eurodac legislation (first pan-European fingerprint database for tracking irregular migrants and asylum-seekers established in 2003) was to be improved by the Council and also find a compromise on a temporary protection scheme based on 'burden-sharing' and a financial solution for sudden situations, where many refugees arrive and apply for asylum. The long-term objectives of the Tampere Conclusions were that Community rules should create a common asylum procedure and that a uniform refugee status should be introduced. All these developments and objectives paved the way for follow-up legislative CEAS framework. (European Asylum Support Office, 2016; Huber, 2018; Kasparek, 2016).

The first phase of the CEAS can be delineated through the adoption of secondary legislation enacted between 2000 and 2005, aiming to harmonize minimum standards. Following Papathanasiou and Kapartziani (2016), the first stage of the CEAS can also be characterized by state power in the transformation of the directives and border control. Until 2004, the Council initiated the Eurodac database for storing and comparing fingerprint data and introduced the European Refugee Fund. In addition to that, the Council finished work on the Temporary Protection Directive in 2001. This directive clarifies that if a member state is overstrained to deal with the sudden number of applications, resettlement via 'burden-sharing' can be applied. Moreover, the Reception Conditions Directive intends to set common standards for several issues, like freedom of movement, education or family. Furthermore, the already existing Dublin Regulation was revised in 2003 and operated under community law (Dublin II). Moreover, the Family Reunification Directive was introduced, which comes under the EU immigration legislation and does not come directly under the CEAS framework (Huber, 2018; Cherubini, 2016; Kasparek, 2016).

In 2004 the Qualification Directive was implemented. The main objective of this directive was to harmonize the status of a refugee in all EU member states and to establish a common basis and standards regarding the decision-making process about the determination of the refugee status. In addition to that, it also introduced subsidiary protection. In 2004 the follow-up programme of Tampere – called the Hague Programme – set the scene as the second important guideline of the CEAS from 2005 until 2010 (Ondřej, Mosneaga, & Walter, 2018). Consequently, in 2005 the Asylum Procedure Directive amended the framework to ensure the establishment of common standards for the asylum procedure in all EU member states, like maximum time limits concerning the procedure and the right to legal assistance. Despite the advent of minimum standards, significant differences between the member states in their reception of applicants, procedures and the assessment of qualification of international protection remained (European Asylum Support Office , 2016; Ondřej, Mosneaga, & Walter, 2018; Cardwell, 2018).

First phase CEAS instruments	Date of entry into force
The Eurodac Regulation, 2000 ([8])	15 December 2000
The Temporary Protection Directive, 2001 ([9])	7 August 2001
The Dublin II Regulation, 2003 ([10])	17 March 2003
The Regulation laying down detailed rules for the application of the Dublin Regulation, 2003 ([11])	6 September 2003
The Reception Conditions Directive (RCD), 2003 ([12])	6 February 2003
The Qualification Directive (QD), 2004 ([13])	20 October 2004
The Asylum Procedures Directive (APD), 2005 ([14])	2 January 2006

Table 3: The first phase of the CEAS (European Asylum Support Office, 2016, p. 15)

Dynamics of the first generation of asylum laws

Contesting and competing policy core beliefs

According to Ripoll Servent and Trauner (2014), the Council developed a certain policy core belief. Member states were in favour of policy solutions, which restricted rights and benefits for asylum applicants. Most of the Council positions imply distrust towards applicants for international protection; this demonstrates the negative vision of asylum. This perception gave rise to controversial measures like shifting the responsibility to third countries or restriction of movement to specific areas. At the same time, member states also highlighted the necessity for a minimum of harmonization. Ripoll Servent and Trauner pointed out that *"the emphasis on weak integration affected mostly those texts dealing with procedures; both the Dublin Regulation and the Procedures Directive avoided any major changes to domestic structures"* (Ripoll Servent & Trauner, 2014, p. 1146). Hence, drafts for establishing a particular authority in charge of dealing with applications or the introduction of a three-tier system for appeals were rejected to maintain national competences and sovereignty. Also, the principles of the Dublin Regulations were also maintained as the basis and were only marginally modified, even if they were founded on

"*responsibility-shifting rather than responsibility-sharing"* (Ripoll Servent & Trauner, 2014, p. 1146)*.*

To sum up, the Council advocated a restricted vision of asylum and demanded retaining the member states' flexibility. This implies that under consultation the member states had the final say concerning legislation. As a result, the member states could shape the policy field based on their advantages and the European Parliament had only little impact on the legislative outcome (Ripoll Servent & Trauner, 2014). This demonstrates that the development process of the intergovernmental beginnings of the Schengen regime in 1990, which had been slowly 'communitarized', did not boost the depth of integration. The development mainly followed internal market patterns of negative integration and regulatory policy-making instead of transferring executive power to European institutions. The member states had (and still have) the implementation process and operational administrative capacity firmly under control (Schimmelfennig, 2018a).

The European Parliament challenged the restrictive rationale of the member states because it demanded a uniform status for asylum applicants and those who apply for other forms of protection. The EP disapproved the curtailment of the freedom of movement of applicants and the restrictive conception of the 'safe country' principle, while it pushed for progress towards more harmonization. The EP opposed the Council because it had proposed policies which were more liberal. Hix and Noury (2007) also deduced that a coalition of socialists, liberals, greens and radical-left Members of the European Parliament achieved to „*position the EP as a ‚pro-migrant' actor between 1999 and 2004*" (Ripoll Servent & Trauner, 2014, p. 1148). To put it briefly, the positions of the EP often overlapped with those of refugee-friendly organisations, like the European Council on Refugees and Exiles. The EP already tried to form a coalition with the Commission on asylum matters because it did not have enough legislative power to influence the direction of the policies (Ripoll Servent & Trauner, 2014).

Furthermore, the European Commission pursued a rights-based approach during the first period and strived for harmonization, like the EP. The difference between the proposal of the EC and the position of the Council can be explained by 9/11, because the EC published their proposal before the attack (Ripoll Servent & Trauner, 2014). Papathanasiou and Kapartziani (2016) argue that 9/11 had an impact on European security and migration policies; as a consequence, the 'securitised approach' linked migration and movement to evils. On the one hand, European legislation in the form of directives brought minimum standards on asylum procedures into focus, while on the other hand, the introduction of the European Visa System, Eurodac, the empowerment of Frontex, Europol and Eurojust are indications that the member states transferred gradually competences of migration and border control to the supranational level

(Kapartziani & Papathanasiou, 2016). The revised proposal of the Procedure Directive (2002) *"incorporated more restrictive stances, such as derogations to the right to a personal interview or more difficult access to examination stage"* (Ripoll Servent & Trauner, 2014, p. 1147). In addition to that, the Commission was trying to implement more harmonization with regard to instruments dealing with procedural law and it also supported the establishment of a new authority, like the EP. Both of these aims were dismissed by the member states. Regarding the decision-making before communitarization until 2005, the Commission and the member states shared the right of initiative. The Council that acted with unanimous votes and the lack of power of the Parliament 'created' a European Commission to mainly serve the national governments based on their wishes (Ripoll Servent & Trauner, 2014).

6.2.   The second phase of the CEAS 2006-2013

Continuous development - Communitarization and intensive trans-governmentalism

In 2007, the European Commission issued a Green Paper on Asylum and a policy plan in 2008. The Green Paper criticised the behaviour of the member states' implementation process of the CEAS directives and clarified that a wider protection, even beyond refugees and people benefiting from temporary protection, was necessary. In 2007, the Treaty of Lisbon modified the legislative framework of the European Union: the three-pillar-system was discarded and asylum was brought under a different mode of policy-making. This new mode included: the right to initiative by the Commission; the right to take decisions by the Parliament and the Council together; and, judicial oversight by the CJEU was renewed and it could act on preliminary references (Münch, 2018). The EP receiving joint decision-making powers on asylum highly improved its political scope. The Treaty stated again to strive for a more common standard and harmonization within the CEAS framework, emergency measures in times of crisis to be allowed, and solidarity as a common basis. In accordance with the aims which had been formulated in the Hague Programme and attempting to implement them, the CEAS was revised under the regulatory mode (Treaty of Lisbon, 2007, Art. 63; Cherubini, 2016; Huber, 2018; Kaufmann, 2020).

The second phase of the harmonization of the CEAS really started in 2008 with the European Pact on Immigration and Asylum by the Commission, which aimed at establishing "*a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection' on the basis of 'high protection standards'"* (European Council, 2009; European Asylum Support Office , 2016, p. 16). This intergovernmental agreement was pivotal, because it marked the beginning of several conflicts between the European institutions and the member states within the field of migration, asylum and borders. The Stockholm Programme replaced the Hague Programme, set the guidelines from 2010 until 2014

and it emphasised a common asylum procedure based on a uniform status for refugees, instead of pushing towards minimum standards. In 2010, the European institutions founded the European Asylum Support Offices to coordinate the activity of the member states and provide asylum support teams through the Asylum Intervention Pool. Additionally, the European Network on Migration was established to deliver reliable information about the situation of all subjects related to migration (Münch, 2018; Davis K. , 2020). With entry into force of the Treaty on the Functioning of the European Union (TFEU) in 2009 (more precisely, renaming through the Lisbon Treaty), the EU Charta became legally binding and a full component of EU primary law. Article 78 of the TFEU played a central part regarding the progress of the CEAS because it lays down the legal basis for a common policy on asylum and subsidiary and temporary protection. This article also states that that the EP and the Council shall establish measures for a CEAS (European Asylum Support Office , 2016). From 2011 until 2013, the reform of the CEAS legislation passed into law. The second stage can be pictured as a new-shared competence between member states and European institutions. The Commission and the European Court of Justice can apply and enforce the implementation of legislation in the member states (Kapartziani & Papathanasiou, 2016).

The new Asylum Package included the Dublin Regulation, Eurodac and all directives dealing with qualification, reception conditions and the asylum procedure. Until the end of the Stockholm Programme, much progress had been achieved but still, the desired aim of implementation of the directives and other standards had not been attained by all member states, especially with regard to a common asylum procedure (Huber, 2018; Cherubini, 2016). One explanation for this development could be the Parliament's approach, which can be mapped out as not liberal enough, and its actions that do not sufficiently favour harmonization. In addition to that, the member states did not move away from their strong position on not giving up further control. The European Commission proposed a new five-year programme but in contrast to the last ones, this one underscored strengthening policies, which were already established instead of introducing new ones. This was in line with the Council's vision because it did not aim for a new ambitious approach with more suggestions for deeper integration (Ripoll Servent & Trauner, 2014). By June 2013, the second phase of the CEAS development was completed with the enactment of recast secondary legislation, which repealed the previous legislation on the same subject. The reforms of 2013 still lacked substantive responsibility-sharing mechanisms and the more powerful EP due to the joint-decision making in asylum policy did not lead to more responsibility-sharing (Kaufmann, 2020). The subsequent figures present the instruments of the CEAS in the second phase (European Asylum Support Office , 2016).

CEAS Instruments	Date of entry into force
The Temporary Protection Directive, 2001 ([22])	7 August 2001
The Commission Regulation laying down detailed rules for the application of the Dublin Regulation, 2003 ([23])	6 September 2003
The Qualification Directive (recast) (QD (recast)), 2011 ([24])	9 January 2012
The Eurodac Regulation (recast), 2013 ([25])	19 July 2013
The Dublin III Regulation (recast), 2013 ([26])	19 July 2013
The Reception Conditions Directive (recast) (RCD (recast)), 2013 ([27])	19 July 2013
The Asylum Procedures Directive (recast) (APD (recast)), 2013 ([28])	19 July 2013

Table 4: The second phase CEAS instruments (European Asylum Support Office, 2016, p. 17)

The EU legislative instruments of the CEAS consist of primary law (TFEU, Treaty on the European Union (TEU) and the EU Charta) and secondary legislation (only two regulations: Dublin III and Eurodac Regulation – recast; and the rest are directives). Adopting mainly directives shows again the power of the member states because they need transposition into national law and they have a certain scope of discretion regarding implementation. Additionally, it is pivotal to differentiate between the common immigration policy of the EU and the asylum policy, even if the fields and some specific policies are closely linked to each other, like the Family Reunification Directive or the Returns Directive (European Asylum Support Office , 2016).
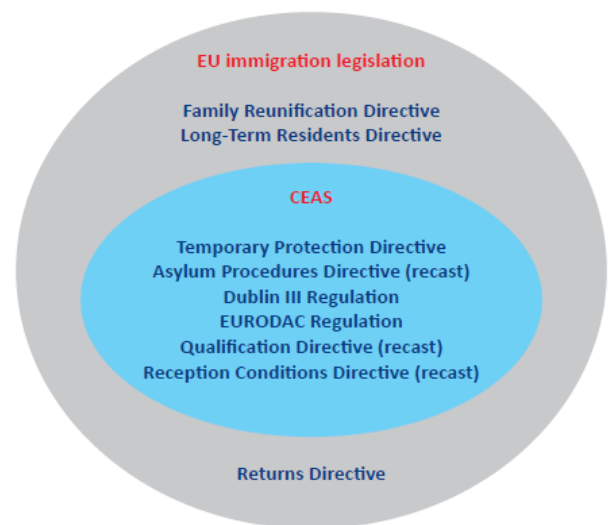

Figure 5: EU immigration and asylum law (European Asylum Support Office, 2016, p. 18)

Moreover, during the second phase of development, the financial and economic crisis caused a lot of tension between the member states, which was not beneficial for achieving progress in asylum policies. The crisis did not only have an effect on the policy-making process, it also affected the situation of refugees, because some member states were not able to sustain the functioning of their asylum procedure due to budgetary constraints. The report of the United Nations High Commissioner for Refugees from 2014 stated that there had been difficulties in accessing the asylum procedures and violations of the principle of non-refoulement. Trauner (2016) demonstrated that the deficiencies of the EU asylum system, such as the different asylum standards, had become more apparent in the light of the financial and economic crisis. During 2005-2013 the strategy of the EU institutions can be circumstantiated as *"maintaining the policy core of existing EU asylum laws while providing more support for countries under migratory and/or financial stress"* to ensure policy stability (Trauner, 2016, p. 316).

Dynamics of the second generation of asylum laws

Co-decision making instead of negotiating under consultation

According to Ripoll Servent and Trauner (2014), the positions of the EU institutions during the second phase were more similar to each other, compared to the first generation of asylum laws. It is important to highlight that the developments happening in the second phase were connected to the consultations of the first generation of asylum laws. The Council and the Parliament pursued two different approaches (not expanding rights for applicants and flexibility for member states vs. liberal refugee-friendly measures and more harmonization); these were completely contradictory. The second generation of law was, in contrast to the first one, negotiated under co-decision making, bringing about an empowered EP.

The Commission was on the same page as the Parliament, pushing towards more harmonization. The Council argued that the member states had recently executed the first wave of new rules of asylum and that there was no urgent need to pass new legislation (Trauner, 2016). The Council did not alter its restrictive approach, but in some limited areas, it became more open to enhancing rights (e.g., family reunion). The European Parliament adjusted its approach a little bit and some positions moved closer to the Council´s positions, for example the option to diminish or remove reception conditions or the scope of accelerated procedures. *"The interaction between the Council and the EP in the second phase of the CEAS is described as a tango, where the Council has the lead (Zaun, 2017, p.182-183) and where the EP adapted its policy preferences to those of the Council (Ripoll Servent and Trauner, 2014)"* (Kaufmann, 2020, p. 25). In several other issues, the EP held a strong liberal position, like on issues of gender and people with disabilities. The position defended by the European Commission was marked by ambivalence, both restrictive and liberal, but in general, one could argue that it leaned towards a more rights-based approach. Regarding the negotiations of the Qualifications Directive, the Commission suggested the extension of the term of family and tried to simplify the conditions in which non-state actors can act as agents of protection. In contrast to that, in other documents, which implied the access to procedures, the Commission represented views that were more restrictive (Ripoll Servent & Trauner, 2014).

On the functional dimension (degree and type of integration), the EU institutions had more conflicting viewpoints. While the Council disapproved of measures towards more integration, the Commission and the EP pushed for those measures. Due to this fact, *"the supranational EU institutions sought to limit the flexibility for member states by developing common standards",* like that the EP was still not consenting to the 'safe country principle'. Furthermore, the EP "received *the proposal to suspend transfers under the Dublin system if member states failed to implement the Procedures Directive positively, demanding the same principle be applied if they made a*

wrong or insufficient use of the Qualifications Directive" (Ripoll Servent & Trauner, 2014, pp. 1149-1150). The difficult negotiations created a policy outcome, which did not put forth many modifications within the legislative framework. The asylum laws passed in 2013 did not amend the policy rationale, which was initially dictated by the Council. The key elements, defined in the legal integration process, have not been challenged. A new policy layer has been added to the system to guarantee sustainability and credibility. These measures can be summed up in three categories: financial solidarity, operational support through EASO and Frontex, and voluntary relocation (Trauner, 2016).

6.3.   Advocacy coalitions and their positions

Inter-institutional coalition-building became more relevant since legislative co-decision-making. An advocacy coalition was formed under the supremacy of EU interior ministers with centre-right groups (especially members of the European People's Party – EPP). This coalition managed to frame the discussion in a certain way that the conflicting coalition, comprising the Commission and centre-left MEPs, agreed to the interior ministers' preferred core of the EU asylum policy. The main reason why the Council was able to shape the policy core more than the other institutions was that the policy core beliefs of the Council had been more stable compared to the EP and the Commission. As stated by Ripoll Servant and Trauner (2014), research interviews revealed that solutions from the centre-left interior ministers did not differ in many ways from the solutions of their centre-right colleagues in the Council. The dominant issues which were debated in the Council were administrative costs of various asylum laws and accommodating national practices instead of ideological questions.

Inside the Council, the coalition-building put emphasis on finding solutions for member states, which were more affected by a higher number of asylum applications. Changes in the systemic governing composition in the Council did not have a real impact on the common positions. In contrast to that, those systemic changes were pivotal for the EP and the Commission. In 2009, the elections of the European Parliament resulted in a conservative-dominated EP with a new Commissioner. Cecilia Malmström (former liberal MEP) replaced Jaques Barrot (French conservative). Due to the primacy of the conservatives in the EP and the appointment of a liberal Commissioner, the EPP and the Alliance of Liberals and Democrats for Europe (ALDE) became more powerful, but these structural changes were not primarily significant for the policy outcome. Malmström and ALDE did not endorse joining the Council-EPP advocacy coalition and after her appointment, the Commission advocated for a more rights-based approach, striving for more harmonization (Ripoll Servent & Trauner, 2014).

The first proposal of the Commission was debated intensively and provoked a stalemate in the Council because the member states executed the first wave of asylum laws lately and they did

not want to shift away from the policy core. Therefore, the Council risked failing in the negotiations to strengthen the policy core and present it as the most legitimate. In contrast to that, the centre-left MEPs and the Commission argued for more harmonization so as to guarantee that asylum seekers had more similar prospects of getting asylum throughout all EU member states. Stronger integration would be fundamental for these kinds of changes and the coalition of interior ministers and the EPP group clarified that they strongly disliked those suggestions. As a result, the Commission decided on a recast of the recast, which would spawn a policy outcome that was closer to the Council's view. The Commission presented new proposals on the Procedures and the Reception Directives in 2011. To achieve the enactment of a new asylum package, the MEPs from ALDE needed to be convinced to vote in favour of the Commission's proposal. In fact, the coalition of the Council and the EPP managed to convince ALDE to join their team. In this context, it is vital to stress that through the EP's co-decision powers, the dynamics reconfigured and it felt more responsible for the outcome (Ripoll Servent & Trauner, 2014). *"This new understanding also led the EP to exhibit a more conciliatory behaviour, avoiding amendments that had few prospects of being met by the Council. In fact, informal negotiations started so early in the procedure that it became increasingly difficult to differentiate and single out the positions of each EU institution"* (Ripoll Servent & Trauner, 2014, p. 1152)*.*

Kaufmann (2020) analysed the discursive strategies of MEPs (EP plenary and LIBE Committee on Civil Liberties, Justice and Home Affairs) in asylum reform debates from 2009 until 2014, assuming that the main purpose of speech acts was having an impact on policy-making. He wanted to evaluate the absence of an effective responsibility-sharing mechanism by examining speeches through a content analysis of video protocols where MEPs argued in favour of responsibility-sharing mechanisms (sharing norms, money or people). To put it briefly, his analysis shed light on the fact that MEPs across the political spectrum favoured responsibility-sharing, MEPs from countries at the south-eastern border tend to use solidarity discursive strategies in this context, and MEPs adjusted their discursive strategies to the concrete responsibility-sharing mechanism which had been debated. Right-wing MEPs also tend to use solidarity discursive strategies, but they *"infused solidarity frames with their political vocabulary as to demand solidarity with their country of origin"* (Kaufmann, 2020, p. 5)*.* The author concluded that four strategies, outlined mainly by Thielemann (2005), were used: avoidance of damaging unilateral action (argues against a unilateral EU response even if it would support member states, because it could affect others negatively); insurance rationale (argues that responsibility-sharing could work as insurance device e.g., increase the predictability); package deal (argues that states could contribute in different ways to responsibility-sharing and to the public good of humanitarian protection); and, solidarity (paying attention to the normative principles of fairness and equality). The first three strategies relate to intergovernmentalist points of view and they pursue increasing

the efficiency of the CEAS without establishing redistributive mechanisms. On the contrary, the solidarity principle strives for a balanced, equitable and sustainable distribution of responsibility and expenses. Even if the analysis illustrated that the debates can be characterised as substantive and problem-oriented debates, they did not result in essential reforms of the CEAS (Kaufmann, 2020).

Due to little information and literature on certain member state positions, the Council will be acknowledged as a unified actor before the crisis. The negotiation process is secondary in this context and the outcome – recasts of the recast and the strengthening of the policy core – is more significant, than individual member state positions. To conclude, the dominant policy core belief since the 1990s neglected responsibility-sharing and did not promote solidarity among the member states – even if the Tampere Conclusions already aimed for a common asylum procedure. According to Ripoll Servent and Trauner, from 1999 until 2005, the negotiations on asylum law were conflictual, especially between the Council and the Parliament. Both actors developed different policy core beliefs – restricting rights and benefits for refugees and weak integration vs. liberal, refugee friendly proposals and stronger integration. The policy core belief of the Commission emphasised solidarity and responsibility-sharing.

The centre-right groups of the European Parliament, especially the EPP formed a coalition with the Council and the centre-left MEPs formed a coalition with the Commission. The dominant advocacy coalition was the Council-EPP-coalition and under consultation, the Council succeeded in translating its positions into law, thus consolidating the Union's asylum policy core. In comparison, the second wave of asylum law became marginally more harmonized and less restrictive (minor policy change). The following conclusion can be drawn: the EU had a 'significant rights-enhancing effect' and the empowerment of the EU's supranational institutions made the *"EU asylum policy venue more liberal"* (Ripoll Servent & Trauner, 2014, p. 1153). So, the Parliament and the Commission adapted their positions more than the Council, but the policy core was still not questioned and already existing EU law was only slightly adjusted (secondary aspects – minor policy change). To sum up, regarding the substantive dimension which stressed the content of the policies, the second wave of asylum laws only changed secondary aspects in consonance with the ACF, because the policy core beliefs of the asylum laws remained resilient.

6.4.   Development of soft and hard law

Analysing policy change is further connected to the legally (non-)binding nature of policies. Hard and soft law can be distinguished by two factors, obligation and enforcement. Hard law refers to circumstances where hard obligations and hard enforcement are interlinked. In contrast to that, non-legal norms induce no legal obligation and no enforcement mechanisms. In between those two types, there are several different forms of soft law, which differ concerning their level

of obligation and enforcement. Within the Common Foreign and Security Policy (CFSP) and third pillar JHA, there is a combination that applies hard obligation without any kind of enforcement mechanism. The third pillar of the EU has been communautarized in two stages. After the entering into force of the Treaty of Amsterdam, one part of the JHA (which contained asylum, immigration, border controls) was put under the authority of the Court of Justice. Soft rules were transformed into hard rules. The second extension was determined for the remaining part of the JHA (police and judicial cooperation within criminal law) until the Treaty of Lisbon. The combination of hard obligation and no enforcement portrays conditions that were in place for the third pillar from 1993 until 1999 and for the minimised one between 1999 until 2009. The framework decisions that the Council introduced were legally binding but could not be submitted to legal examination (Terpan, 2014).

As already presented, from 1997 until 2014, hard and soft law was adopted: soft norms created the framework and often paved the way for the adoption of hard legal acts with several programmes, like Tampere, the Hague and Stockholm or the European Pact on migration and asylum. These documents are pivotal in the wide field of migration policy in general, while devoting particular attention to specific issues (like illegal migration or return policy), regulations or directives (hard law) were mainly adopted. Saurugger and Terpan (2020) concluded based on their analysis that during this period, more hard law was used than soft law. A figure on the following page illustrates this development. The enactment of soft law can be explained through sovereignty and the search for effectiveness could be a reason why it is transformed into hard law. Communautarizing the JHA resulted from the growing awareness that the use of soft law was not effective (Saurugger & Terpan, 2020). "*The third pillar has been associated with lowest common denominator decision-making and implementation deficits"* (Terpan, 2014, pp. 26-27). The European Commission commented on the general assessment of the Hague programme that it was "*rather unsatisfactory".* This negative perception of using soft law was brought forward together with the argumentation in support of an extension of the Community method to the JHA field (Saurugger & Terpan, 2020).
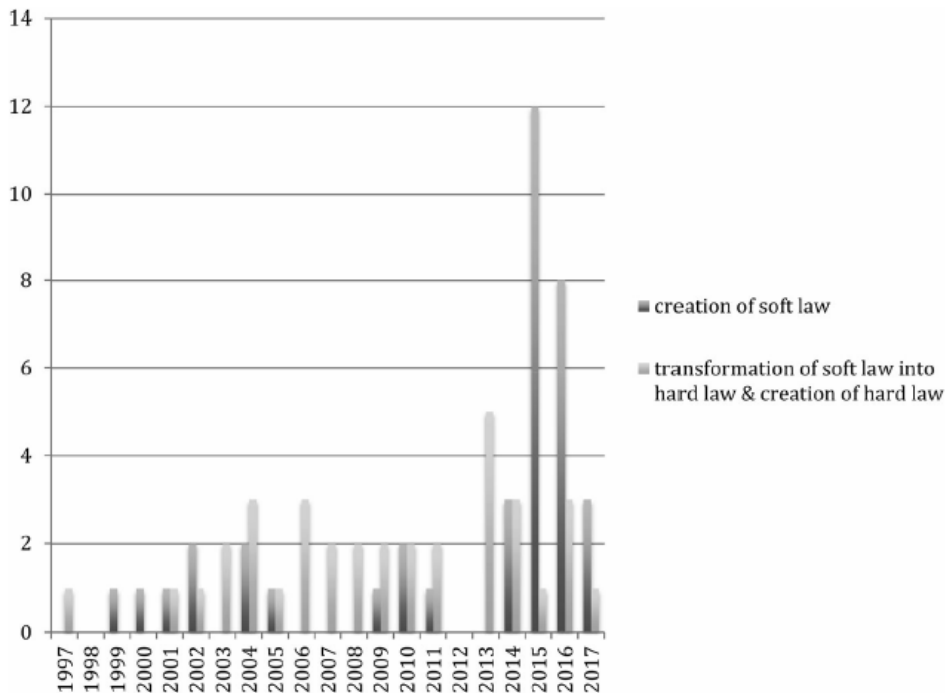
Figure 2. Migration policy – From hardening (1997-2014) to softening (2015-…).

Figure 6: Migration policy (Saurugger & Terpan, 2020, p.14)

7. Crisis as theoretical construct and trigger for change

"*Challenges to the status quo in all types of society tend to be framed in terms of crisis. Crisis is a structuring concept: by labelling a situation as one of crisis, one declares the presence of a threat to a prevailing order*" (Dagenais & Raboy, 1992, p. 5).

Studying crisis related change demands defining the term crisis, which has, as Coombs (2010) clarified, no universally accepted definition (De Rycker & Don, 2013). In academia, a crisis is conceptualised as "*a phase of disorder in the development of a person, an organisation, a community, an ecosystem, a business sector or a polity*" (Boin, Hart, Stern, & Sundelius, 2017, p. 4), but various aspects of the complex concept of crisis are discussed and viewed through different theoretical lenses. Some scholars argue that crises have already become 'normal accidents' – meaning that crisis faded out until it no longer exists, while others claim that crisis is always present in the sense of "*a permanent state of exception*" or society altered, according to Beck (2006), to a 'risk society" (De Rycker & Don, 2013, pp. 5-6). „*Crises are increasingly common parts of the larger organisational and social landscape of modern life*" (Seeger, Ulmer, Novak, & Sellnow, 2005, p. 79). This already provides a few insights into the variety of approaches. Within a realist approach, Fairclough (2010) described a crisis accepting that "*there is real world,*

including the social world, which exists irrespective of whether or how well we know and understand it" (De Rycker & Don, 2013, p.5). Following this statement, crisis can be identified as a real-world phenomenon, instead of a unique, extraordinary discursive object.

Crisis is not a fixed term and various people understand it in different ways. Additionally, the meaning varies with "*changes in the nature of an individual's perceived and/or experienced difficulties and the way people (choose to) construe stakeholders' expectancies, organizational performance or integrity, the normal or prevailing order, the status quo, the core values of a polity, the polity itself and how we theorize history*" (De Rycker & Don, 2013, p. 8). Some frequently used elements and adjectives within the academic field are for example: negative, threat, disrupting an existing order, recurring, abnormal, unpredictable, preventable, requirement of decisions and responses, uncertain, accompanied by distress, and the involvement of damage. Moreover, many scholars identified significant characteristics for a crisis. Wang and Lu (2010) defined a key characteristic as the probability that an organisation will be exposed to a crisis, the impact in terms of scope (duration and severity) of damage and the predictability. Saurugger and Terpan (2020) used the conceptualisation of Hermann (1963) for their academic research, who defined a crisis as a situation, which *"(1) threatens the high priority goals of the decision-making unit, (2) surprises the members of the decision-making unit by its occurrence, (3) creates a situation of urgency, and restricts the amount of time available for response"* (Saurugger & Terpan, 2020, p. 24). Furthermore, crises are critical junctures in the lives of systems, in which the functioning of the system becomes uncertain. If people experience such critical junctures as urgent threats, then this issue has to be listed as top priority. Core values or life-sustaining features of a system are threatened, like safety, security, justice, rule of law, welfare, health, integrity or civil liberties. Therefore, crises are also often defined by these three key elements: threat, urgency – even if it is socially constructed – and uncertainty. Not all these parameters have to be objective and situational; they are semantic and strategic mechanisms, which can be shaped by various actors. The perception of one particular crisis will vary among several actors within the system (Boin, Hart, Stern, & Sundelius, 2017). In addition to that, McMullan (1997) refers to another facet of crisis stating that 'triggering events' need to initiate damage causing crises and only the recognition of this event as a threat will allow it to evolve into a full-featured crisis (De Rycker & Don, 2013).

Thus, various interested groups and parties, stakeholders, and institutions, which experience a situation as a crisis, brand a crisis as crisis. In the social sciences, the ontological status of a crisis itself has also been challenged. In contrast to the realist approach, symbolic interactionism or social construction theory describes crisis as socially and discursively constructed and opposes the view that it is an objective, material real world phenomenon (De Rycker & Don, 2013). Consequently, interaction and ever-changing socio-cultural and historic contexts play an

important role because the contexts in which discourses are generated are made up of *"the set of cognitive representations that discourse participants have of the world"* (Hart, 2011, p. 1). This approach has its roots in the social constructivist premise that social reality is constructed through language. And therefore, crises are symbolic and subjective. In addition to that, the dominant stakeholders in society, which are perceived as taken-for-granted power structures, define and frame a crisis to galvanise interventions or measures and to generate support for their proposed policy change. *"Crisis is produced within social relationships, hence, the significance of language and other meaning-making systems"* (De Rycker & Don, 2013, p. 20).

Theories, which accentuate the 'crisis narrative', are also embedded in crisis literature. These theories argue that through narratives and discourses a crisis is generated within this process. This means that events need to be designed as a crisis and social actors and human agency take centre stage. From a more general political and social perspective, crisis is also pictured in terms of social crisis, social transformations and social action strategies. Human behaviour, human agency and certain aspects of affectedness play a vital part within these approaches. From a more philosophical and historical-political point of view, Koselleck (1959) argued that a crisis needs to be perceived as a concept and a practice to receive a more comprehensive treatment within the context of conceptual history ('*Begiffsgeschichte*') to examine how meanings and concepts of crisis have been reshaped through history (De Rycker & Don, 2013). When a crisis shatters the peace and order of a society, the population looks to their political front-runners because they are expected to chart pathways out of the crisis and to minimize the damage. *"Crisis provide real-world 'stress tests' to the resilience of the political systems and the crisis management capacities of leaders"* (Boin, Hart, Stern, & Sundelius, 2017, p. 3). Crises create extraordinary circumstances and simultaneously opportunities for governance. Crisis related shocks or vulnerabilities can generate criticism of existing institutional structures and applied policies. Hence, radical change can be the outcome of a crisis (Boin, Hart, Stern, & Sundelius, 2017).

7.1.   The crisis of the CEAS – the 'migration crisis' in 2015

Migration and human mobility have always been part of the history of humanity. Nowadays, the terms 'crisis', 'refugees' or 'migrants' have been strongly connected by politicians, academic scholars and humanitarian organisations. In accordance with Sager (2019), the crisis related language shaped the discussion around migration; it is framed as something unforeseen, out of the ordinary, atypical, temporary and allows "*for politicization, securitization and hence legitimization of policies both nationally and internationally, which would go through serious public scrutiny under normal circumstances"* (Yavçan, 2020, p. 2). The perception of migration as a crisis emerged as a "*generic phrase in media, political and academic discourses to describe migration and asylum since the early 2010s across Europe.* […] *This ideal type operates as a category of*

power, which in turn gives way to particular ways of dealing with and responding to migration. Constructing migration as crisis is thus both a speech act and a form of migration governance" (Cantat, Thoillet, & Pécoud, 2020, p. 6). Following Lucassen (2018), the primary source of the crisis rhetoric used for the 'European Refugee Crisis of 2015' (called crisis of the CEAS in this thesis), was not migration itself. It was a combination of several factors, which had an impact on the discourse: "*economic insecurity and social risk linked to neoliberal globalisation; changing attitudes towards immigrants and toward Islam; incidents of Islamic terrorism; the rise of far-right parties; and the changes in the EU visa regime which make highly visible migration by sea one of the only ways to reach the EU".* According to Sager (2019), the identification of migration as a crisis is *"mostly a value of judgement, not a straightforward description of a state of affairs".* This perspective can also be criticised because it could engender a myopic approach, which impedes a comprehension and management of migration that comes from an acceptance of migratory movements (Yavçan, 2020).

The contextual transition from the previous theory chapter to the CEAS crisis can be summed up as follows: the crisis of the CEAS can be examined as a variety of discourses, representations and practices, which provide a certain structure for the social world and demand ways to govern it. Taking up on this perception, the CEAS crisis can be characterised as a field "*of enquiry that is crisscrossed by tensions and debates, which engage a multiplicity of actors and definition".* Additionally, a crisis generates a specific response, which often includes extraordinary measures. Therefore, a crisis legitimises "*specific regimes of government as well as, within government structures, specific actors"* (Cantat, Thoillet, & Pécoud, 2020, pp. 4-5). Crisis is also produced through governance. As defined by Brassett and Vaughan-Williams (2012), crisis is governance in a sense that actors identify an event or phenomenon as crisis, embedding it as common sense what need to be done to solve the issue (Fine & Thoillet, 2020). The examination of 'what needs to be done' is in the centre of this thesis.

The crisis of the CEAS was triggered by the largest arrival of refugees since World War II in Europe in 2015/16. The increasing numbers were repercussions from civil war, protracted conflict and deteriorating internal security, especially in the Middle East, Africa and South Asia. Due to the war in Syria, over five million people have been displaced. The majority of these forced migrants have been internally displaced or stayed in Syria's neighbour countries, but more and more people have been trying to reach Europe since March 2015. The reason for this sudden movement was a food shortage, especially in Lebanon and Jordan, where many Syrian refugees had been sheltering. The EU did not pay enough attention to the warnings of the World Food Programme and aimed to adapting measures against people smugglers and their modus operandi (Parkes & Pauwels, 2017). In April 2015, a migrant boat sank and 800 people drowned. This tragedy marks a crucial turning-point because during the next weeks *"all relevant actors were*

called upon to take a comprehensive European approach and step up fair sharing of responsibility and solidarity between member states" (Bačić Selanec, 2016, p. 75)*.* In May 2015, the European Commission presented the European Agenda on Migration, a five-year programme, as a cornerstone, which provides a core system of measures to enhance a consistent and clear policy approach. The Agenda focused on border protection, saving lives at sea, progress on the subject of international obligations, and emergency measures. It aimed to: improve the CEAS; introduce quotas for internal regulation; make adjustments to the Dublin Regulation; and ensure a more coherent application of the CEAS framework (Bačić Selanec, 2016). The main goal was to strengthen *what was already there* to provide enough time for the national implementation process of already adopted legislation. Due to this objective, not many future plans were presented. This also could be interpreted in a way that the drive for integration in migration and asylum policy had slowed down. Due to the crisis in 2015, which was a trigger for policy development and transformation, the slowing down was replaced by speeding up (Huber, 2018). Even if the reinforcement of European Border and Coast Guard Agency (Frontex) was the most effective set of measures, but due to the research question, I put emphasis on the improvement on the CEAS and the other measures will only be mentioned briefly. Appointed in the Agenda on Migration, the Commission tripled the capacities and budgetary assets of Frontex-led and now joint-operations, Triton and Poseidon in 2015 and 2016 (maritime border surveillance and obviating further loss of life at sea). Additionally, the Council decided on launching a military operation (EUNAVFOR Med) to surveil and assess human smuggling. Furthermore, the hotspot approach, proposed by the Commission, emphasized the coordination between the European Asylum Support Office, Frontex and Europol to help and provide guidance for frontline member states. Moreover, the EU addressed the root causes of *irregular migration* through development and collaboration with third countries (e.g., resettlement mechanism), provided international humanitarian or financial assistance, and elaborated a return handbook in addition to an action plan (Bačić Selanec, 2016; Davis K. , 2020).

The CEAS crisis functions as an external shock, propelling border security and the integrity of the Schengen system at the very top of the political agenda. It had a significant influence on both, the refugees seeking a better life in the EU member states and on the member states. In the years 2015 and 2016, more than 1.2 million people applied for asylum within the European Union. Most of the applications were from people fleeing from Syria, Afghanistan and Iraq. In the middle of the year 2015, the number of refugees arriving in Italy and Greece increased continuously; both countries were overstained because they lacked a well-structured and sufficient asylum system. The increasing numbers of refugees highlighted the systemic deficiencies in EU asylum cooperation. As a result, both countries 'waved asylum-seekers through' and this caused secondary movements towards Northern Europe. In Greece, there was a 750% increase of

refugees entering the country between 2014 and 2015 and the conditions in migrant camps and detention centres were heavily criticised. The same criticism applies for the refugee conditions in Italy, where the detention centres were cited for human rights violations after the country also experienced an extreme increase in 2014 and 2015 in refugees arriving at the borders. Due to the Dublin System, Italy and Greece were first entry countries, which makes them responsible for the asylum procedure, but when the secondary movements started, the Dublin System broke down completely. One of the top-recipient counties, Hungary, detained asylum-seekers systematically and subjected them to degrading treatment. Germany unilaterally suspended the Dublin Regulation for people from Syria in August 2015. To put it differently, even if Germany was not the first country of entry, it admitted Syrian refugees into the German national asylum system. German chancellor Angela Merkel hoped that more EU member states would show solidarity and go along with the German approach, but this did not happen. (Niemann & Zaun, 2018; Ondřej, Mosneaga, & Walter, 2018; Davis K. , 2020).

After two weeks, the German government decided to reinstate temporarily border controls at the internal Schengen border with Austria because of the large number of people crossing into Bavaria. In contrast to Germany´s initial approach, this measure was immediately applied by many other member states too, like Austria, France, Denmark and Sweden. In October 2015, Hungary built a new fence along its border with Croatia and Serbia to shift migration flows to neighbouring countries. In 2016, Hungary declared a state of emergency to tighten border control. The reasons for this were the still increasing numbers of asylum-seekers and the great dissatisfaction with EU actions to manage external border control. These developments led to the closure of the 'Balkan route', which trapped tens of thousands of people in Greece, living in disastrous and degrading conditions (Niemann & Zaun, 2018; Bauböck, 2018; Davis K. , 2020). Médecins Sans Frontières' statistics emphasise the dramatic situation half a year after the CEAS crisis in summer 2015: „*Since 1 January 2016, 200,000 people have arrived on European shores by sea. The great part of them arrived through the Aegean Sea before the closure of the so called Balkan road and around 50,000 arrived in Italy through the dangerous Central Mediterranean route. At least 50,000 are stuck in Greece after the closure of the Balkan route, with the extremely dangerous Central Mediterranean becoming one of the few remaining opportunities to reach Europe for thousands of people. More than 2,800 people died this year at sea, 1,000 more than in the same period last year*" (Apetroe, 2016, p. 2)*.*

Depending on the theoretical perspective, on the one hand, one could argue that the crisis is to some extent constructed through media, political opportunism of political entrepreneurs, e.g., far-right populist movements, but on the other hand, other parameters such as threat, urgency and uncertainty (even if socially constructed) can also be considered as defining elements (Cantat, Thoillet, & Pécoud, 2020). According to Saurugger and Terpan (2020), the CEAS crisis can be

depicted as a *strong crisis*. The drastic increase of asylum applications in 2015 and 2016 appeared as a surprise. The escalation of the situation in Libya and Syria was not a secret, but it was not possible to predict how many people would apply for asylum in Europe. In addition to that, due to humanitarian reasons, there was an urgency to solve the crisis. Not taking any actions would lead to more people dying. Moreover, the perceived menace to the system also played an essential role for three reasons: first, the rising number of people losing their lives in the Mediterranean See, the inapplicability of the Dublin III regulation, and the political consequences of the crisis (conflicts between EU member states and the rise of populism) (Saurugger & Terpan, 2020). Nevertheless, this thesis assumes that the national governments of the EU member states used a crisis narrative to boost their resources and expand their political scope of activity whether or not the migratory pressures were a 'real or constructed' crisis (Slominski & Trauner, 2018).

8. Empirical analysis of post-crisis policy change

Solidarity is a key term in several EU provisions in the founding treaties. Article 2 TFEU outlines for example the basic values of the Union and underlines that the *"societies in EU Member States are based on pluralism, non-discrimination, tolerance, justice, equality between women and men and also on solidarity"* (Brandl, 2017, p. 802). Solidarity is emphasised in Title V of the TFEU (area of freedom, security and justice), in Article 67 TFEU and especially in Article 80 TFEU. In the context of the CEAS, since the Lisbon Treaty, Article 80 refers to the Chapter on border checks, asylum and immigration highlighting that solidarity and fair sharing of responsibilities should be the governing principle for all policies. Despite Article 80, which insists on solidary actions and several Council Conclusions which always demanded solidarity, there is no mechanism to push solidarity into effect in the legal acts in the CEAS framework (Brandl, 2017).

In the aftermath of the CEAS crisis, the Commission demanded a more stringent application of the existing CEAS legislative framework from the member states. After publishing the Agenda on Migration and monitoring the implementation processes, the Commission took legal action and introduced 37 infringement procedures against 19 member states because they did not transform the directives into national law. According to Brandl (2017), the Agenda additionally set the scene for a fair and balanced participation of all member states, especially in situations where a high volume of arrivals is present. The measure highlighted in the Agenda was the ad hoc activation of the Article 78(3) TFEU; it refers to the emergency mechanisms for adopting provisional measures to support member states which are unable to deal properly with the number of arriving refugees. The aim of this action was to initiate exceptions to the Dublin Regulation in order to

relieve frontline member states because the country the asylum seeker enters first is the country where the application must be submitted (European Parliament, 2019a). Article 78(3) TFEU allows the activation of a specific relocation system for a certain number of refugees from frontlines states to other member states (Brandl, 2017). Relocation is defined as *"a transfer of persons who have 'already applied' for international protection from the Member State in charge of examining their application to another EU Member State"* (Bačić Selanec, 2016, p. 85).

Furthermore, this is also important because there is no 'positive mutual recognition' of approved asylum decisions. As a result, people who have been granted asylum are not allowed to move or reside in the territories of other member states. By the activation of Art. 78(3), all member states would be obliged to share the 'burden'. Moreover, the Agenda also entails technical guidelines of the "*objective, quantifiable and verifiable*" determination criteria of the relocation scheme. The 'distribution key' composed the size of the population (40%), the total GDP (40%), the past number of asylum seekers and resettled refugees (10%), and the unemployment rate (10%) in order to mirror the capacity of the member states to accommodate and integrate refugees. The Commission wanted to activate Article 78(3) twice and the Council approved and introduced relocation schemes. In this context, it is pivotal to state that the relocation system applied for applicants where the average recognition rate was more than 75%, even if only three nationalities met the requisite recognition rate (Bačić Selanec, 2016; Brandl, 2017). The table below gives an overview of the number of asylum-seekers in 2015/16 in every member state and illustrates the unequal distribution.

Table 1: Asylum statistics

Member State	Total number of asylum-seekers 2015/16	Percentage of total asylum-seekers in EU	Asylum-seekers per thousand capita
Austria	125,569	5.3%	14.58
Belgium	52,683	2.2%	4.67
Bulgaria	38,900	1.6%	5.42
Cyprus	4,609	0.2%	3.96
Czech Rep.	2,144	0.1%	0.20
Estonia	254	0.0%	0.19
Finland	36,998	1.6%	6.75
France	144,536	6.1%	2.16
Germany	1,163,677	48.8%	14.29
Greece	24,161	1.0%	2.23
Croatia	2,004	0.1%	0.47
Hungary	202,321	8.5%	20.55
Ireland	5,026	0.2%	1.08
Italy	204,836	8.6%	3.37
Lithuania	512	0.0%	0.18
Luxembourg	3,829	0.2%	6.72
Latvia	576	0.0%	0.29
Malta	3,239	0.1%	7.51
Netherlands	60,730	2.5%	3.59
Poland	19,391	0.8%	0.51
Portugal	1,973	0.1%	0.19
Romania	2,228	0.1%	0.11
Spain	28,929	1.2%	0.62
Slovakia	305	0.0%	0.06
Slovenia	1,355	0.1%	0.66
Sweden	178,100	7.5%	18.18
United Kingdom	77,338	3.2%	1.19

Sources: UNHCR (2017); World Bank (2017).

Table 5: Asylum Statistics (Zaun, 2018, p.50)

8.1.   Overview and discussion of the legal response

The 1st emergency relocation scheme

In May 2015, the Commission published its first resettlement draft to relocate asylum seekers, 24.000 from Italy and 16.000 from Greece. The European Council demanded the quick adoption of this proposal and invited all member states to agree. A 240€ million EU budget was to provide support for the 24-month scheme and member states would receive a lump sum (6000€) under the Asylum Migration and Integration Fund (AMIF) for each relocated refugee. The Parliament did not just approve this proposal, it also emphasised that more contributions to solidarity were needed and proposed the establishment of a permanent scheme. Additionally, the EP suggested that asylum seekers should have the possibility to rank their preferences based on to their social and cultural ties, like e.g., language skills (European Parliament, 2019a; Trauner, 2019). This is a highly sensitive political issue and therefore it was difficult to achieve unanimity in the Council. Consequently, a Council Decision introduced the first relocation scheme on 14th of September; four months passed by between the proposal and its coming into force. This decision was set for a two-year period from the 15th of September 2015 until the 17th of September 2017 (European Parliament, 2019a).

The 2nd relocation scheme

During summer 2015, the migratory pressure increased and migration flows shifted towards the East Mediterranean and the Western Balkans route. Until August 2015, approximately 116.000 refugees arrived in Italy, 211.000 refugees arrived in Greece and 145.000 refugees arrived in Hungary, which led to nearly 140.000 asylum applications just in those three countries. The proposed relocation scheme for 40.000 seems insignificant compared to those numbers (Bačić Selanec, 2016). On the 9th of September 2015, Jean-Claude Juncker, the President of the European Commission announced in his speech on the State of the Union a second draft for the relocation of 120.000 asylum seekers from the three most affected countries (Italy, Greece and Hungary). The European Parliament voted in favour on the 17th of September and in contrast to the four-month discussion on adopting the proposal, the Council agreed by qualified majority on the second emergency decision (applicable until 26th September 2017) in the following 12 days (European Parliament, 2019b). The Czech Republic, Romania, Slovakia, and Hungary dissented, even if it would have brought benefits for Hungary.

The new relocation schemes brought an element of solidarity to the Dublin Regulation and that is why on the 9th of September the Commission suggested making the emergency relocation mechanism a lasting solution, because the EU requires a long-term system for sharing the responsibility. The Commission proposed that the Parliament and the Council establish a permanent crisis relocation mechanism as an exception to the Dublin System, which would make

it an integral part of the CEAS framework. The idea behind that was that the Commission had the power to decide when a crisis took place and the emergency exception could apply (Bačić Selanec, 2016). If the Dublin Regulations under the Article 78(2) TFEU falls within the Title V general rule on an ordinary legislative procedure, the Union would not have to pass each individual decision on a relocation scheme through the Council. Once the relocation scheme passed in an ordinary legislative procedure, the Commission could determine if there was a crisis or not. Furthermore, the Commission intended to evaluate the Dublin System in 2016 pursuant to the Agenda on Migration (Bačić Selanec, 2016; European Parliament, 2019b).

In March 2016, the EU struck a deal with Turkey: the EU provided €3 billion in financial assistance and was willing to reopen discussions about lifting visas and Turkey agreed on controlling its borders and taking back refugees from Greece. This covenant was passed to decrease migratory pressure at the Schengen borders and it established a 'burden-sharing' mechanism through the back door (relocation of Syrian asylum seekers from Turkey to the EU for the purpose of reducing illegal migration from Turkey to Greece) (Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017). The numbers dropped at first, but the deal just deflected the flows. Maritime routes are very dangerous and more people were drowning in the Mediterranean. The EU responded with the extension of its naval activity. This highlights the Union's narrative, restrictive law enforcement policies instead of a broad-minded humanitarian approach (Parkes & Pauwels, 2017). The EP stated in April 2016 that a holistic EU approach to migration would be necessary, asked again for binding distribution mechanisms as it had done since 2009 and emphasised that asylum seekers' preferences should also be considered in relocation schemes. In 2016, the European Council emphasised further cooperation to accelerate the execution of the relocation schemes. Halfway through the implementation process, EU member states relocated 5651 asylum seekers and the Commission underlined in September 2016 that relocation remained crucial due to the increasing migratory pressure.

In May 2017, the EP presented a resolution to urge the member states to fulfil their obligations and in June, the Commission published a report, criticising the Czech Republic, Hungary and Poland for not acting properly and indicating that those countries needed to take actions. Therefore, the Commission initiated infringement procedures against those member states and in December the Commission referred those countries for non-compliance with their legal obligations to the Court of Justice of the European Union (CJEU). In addition to that, Slovakia and Hungary filed petitions to overrule the decision of the CJEU, but the Court dismissed the petitions. The Commission extended the legal obligations so they did not stop in September 2017. By March 2018, 33.846 asylum seekers had been effectively relocated from Italy and Greece to other member states. Moreover, the Commission proposed amending the second relocation decision

so that further 54.000 people could be relocated under a voluntary arrangement. The Council adopted this decision on 29th of September 2016 (European Parliament, 2019a).

The policy choice of the European Union to introduce improvements to the Dublin System was the only possible way to patch up the asylum system. The relocation scheme was a missing piece in the system, which would guarantee that the frontline member states could be relieved. Nevertheless, the core problem of the EU's crisis management technique is that "*all measures the Union has taken presuppose that the Dublin system is a default rule to which all the actors comply*" (Bačić Selanec, 2016, p. 91) . The first entry concept is the cornerstone of not sharing responsibilities and shifting the 'burden' onto member states at the external borders. The Dublin System itself proved inefficient even in ordinary situations – in 2014, five member states processed 72% of all asylum applications EU-wide. However, even during the CEAS crisis, the problematic paradigm of Dublin maintained resilient; only amendments to the Regulation were made. Still, based on the country of first entry principle, frontline member states are always initially responsible. This core principle of Dublin violated the fundamental rights of people seeking protection even before 2015 (Bačić Selanec, 2016).

Country	Commitment Legally Foreseen*	Places Formally Pledged**	Number of Relocated Refugees	Percentage of relocated persons in relation to legally foreseen
Austria	1953	50	15	0,8%
Belgium	3812	1530	997	26,2%
Bulgaria	1302	1070	50	3,8%
Croatia	968	316	78	8,1%
Cyprus	320	205	143	44,7%
Czech Republic	2691	50	12	0,4%
Denmark	0	0	0	
Estonia	329	396	141	42,9%
Finland	2078	2128	1975	95,0%
France	19714	6940	4468	22,7%
Germany	27536	13250	8479	30,8%
Greece	0	0	0	
Hungary	1294	0	0	0,0%
Ireland	600	1152	552	92,0%
Italy	0	0	0	
Latvia	481	627	321	66,7%
Lithuania	671	1160	382	56,9%
Luxembourg	557	545	430	77,2%
Malta	131	205	148	113,0%
Netherlands	5947	2825	2442	41,1%
Poland	6182	100	0	0,0%
Portugal	2951	3218	1496	50,7%
Romania	4180	2182	728	17,4%
Slovakia	902	60	16	1,8%
Slovenia	567	579	217	38,3%
Spain	9323	2500	1279	13,7%
Sweden	3766	3777	2276	60,4%
United Kingdom	0	0	0	
Norway	0	1500	1509	
Switzerland	0	1530	1237	
Lichtenstein	0	10	10	
Total	**98255**	**47905**	**29401**	**29,9%***

Table 6: Refugee Relocation in European Countries (Šelo Šabić, 2017, p.6)

As the table above shows, even if the majority of the member states voted in favour of the emergency relocation scheme, several countries did not comply with their legal duties. *"Implementation has always been the Achilles heel of the Dublin Regulation"* (Knaus, 2017, p. 13). The EU and its member states do not have the political tools or the will to enforce reception standards even if there had been an agreement on those a long time ago. According to Genschel and Jachtenfuchs (2018), low compliance with the Dublin Regulation even predated the crisis and refugees lacked incentives to sue the government of member states for not enforcing EU regulations (which would even restrict their freedom of movement). Since 2015, human rights organisations have pointed out that EU member states *„perpetually undermine refugees' entitlement to fair and efficient asylum procedures – a right which is firmly enshrined in international and EU legislation"* (Schmälter, 2018, p. 1130). It was not possible to implement the relocation scheme of 2015; member states even misapplied the Dublin Regulation and most of them are not able to ensure quick asylum procedures. Additionally, the failure of the relocation

scheme overshadowed the reform proposal of the Commission regarding the Dublin Regulation, which included a permanent relocation scheme (Knaus, 2017).

So, it is clear that implementation within the CEAS framework is a problem, but what possibilities does the European Commission have to enforce compliance with the CEAS? One option is infringement proceedings, which consist out of a letter of formal notice, a reasoned opinion, and a referral to the ECJ that may issue a ruling. The total number of CEAS infringement decisions initiated by the Commission is 235 (until 2017), more precisely, 117 of those have just been letters of formal notice (Schmälter, 2018). *"The 'Schengen crisis' […] came to supplement the CEAS crisis and asylum became the area of JHA responsible for the largest number of infringement proceedings"* (Lavenex, 2018, p. 1197). Besides those procedures, the EC has also the possibility of "*naming and shaming*" - quoting Hartlapp (2007), to pillorying *"non-compliant Member States publicly by means for example of press release"* (Schmälter, 2018, p. 1340). Schmälter (2018) argues that from 2012 until 2017, 50 documents were examined which clearly identified criticism of the behaviour of at least one of the member states, namely Greece that was the most mentioned. Another tool at the Commission's disposal is the variety of agencies and networks, which can serve to urge member states to comply by jeopardising their reputation and they can provide trainings and knowledge to sustain the country to act compliant. The most important ones within the CEAS framework are the European Asylum Support Office (EASO) and the European Migration Network (EMN). Furthermore, by increasing a member states' economic capacity, the management of migration flows can be handled more efficiently. Schmälter (2018) concluded that her analysis illustrates that the EC *"provides training and financial assistance to member states, has few infringement procedures against non-application, and very rarely criticises compliance laggards in public"* (Schmälter, 2018, p. 1348). As a result of her findings, accusations that the EC ignores the violations of the member states cannot be confirmed. Furthermore, even *"full compliance would not have ensured policy consistency because regulatory gaps in […] the Common European Asylum System (CEAS) left many important interdependencies unregulated"* (Genschel & Jachtenfuchs, 2018, p. 184).

Permanent EU relocation mechanism

The uneven realisation of the CEAS in the member states spawned asylum-seekers to apply in those countries where the probability of being granted asylum was the highest. As mentioned previously, the Commission also suggested in addition to the crisis-related emergency measures, a permanent structural solution for better migration management. Therefore, the Commission set out a proposal for a regulation on a permanent crisis relocation mechanism under the Dublin System amending Regulation (EU) No. 604/2013 as regards conditions, factors and mechanisms for identifying the member state responsible for the examination of international protection applications (European Parliament, 2019c). The legislative proposal included:

- a robust EU crisis relocation mechanism,
- clear indicators used by the Commission to determine a crisis situation
- fair sharing of responsibilities between all member states
- a definition of applicants belonging to nationalities for which the recognition rate is at least 75%
- member states' right to refuse to relocate (solely in relation to national security, public order or exclusion provisions set out in Directive 2011/95/EU)
- definition of a mandatory distribution key for determining responsibility

The proposal of the Commission was delegated to the EP's LIBE Committee and discussed in the Council in September 2015. The LIBE Committee also initiated a hearing on *"The reform of the Dublin System and Crisis Relocation"* with the participation of several stakeholders in October 2016, but since then, no progress has been achieved. In October 2015, the Council assessed the list of safe countries of origin and findings on the crisis relocation mechanism before starting a debate on a permanent crisis relocation mechanism (European Parliament, 2019b). Two months later, the Council discussed the establishment of a permanent mechanism: *"some delegations raised general scrutiny reservations, reiterating the need for an evaluation of the functioning of the temporary emergency relocation schemes and addressing the functioning of the hotspots and the prevention of secondary movements. At the same time, some other Member States supported the Presidency underlining the importance of pursuing the discussions with a view to seeking a fairer burden sharing between Member States"* (European Parliament, 2019b, p. 2)*.* On the 21st of June in 2019, the Commission withdrew the proposal because the Council was blocking the decision (European Parliament, 2019c).

The reform of the Dublin System – Dublin IV

As a reaction to the crisis, the European Commission proposed on the 4th of May 2016 a proposal to reform the CEAS, especially the Dublin System, which serves as cornerstone of the CEAS. The reform is particularly complex, because it is part of a wide-ranging reform of the CEAS and an all-embracing strategy to reduce migration flows into the EU. As already noted, the reform of the CEAS includes a five-point strategy: reforming the Dublin System, reinforcing the Eurodac System, accomplishing greater convergence within the EU asylum system, obviating secondary movements, and a new mandate for the EU's asylum agency (Cellini, 2017). The main protection model for the future in the Dublin IV system should be ensuring protection for refugees in their home country and resettlement strategies to the EU. It aims to reduce the number of people in need of protection at the EU borders (European Council on Refugees and Exiles, 2016). The Commission strived for "*creating a fairer, more efficient and more sustainable system for allocating asylum applications among Member States*", just as Article 80 TFEU already stated

that the EU has the obligation to create a more solidary system – also based on high protection standards (Stockholm Programme). But the Commission quickly adapted its dimensional position on the reform, because in May it was already clear that the basic principle would stay the same; however, it would make the system more transparent and effective with an additional mechanism to deal with the disproportionate pressure (Progin-Theuerkauf, 2017). According to Progin-Theuerkauf (2017), the reform entailed the subsequent main modifications:

- Corrective allocation mechanism (fairness mechanism)
- Special pre-procedure (would petrify the Turkey deal): starts with an obligation to introduce a claim for international protection in country of first entry and then the member state has to check if application is inadmissible (other first country or safe third country)
- Other legal obligations for applicants for international protection
- Shorter and non-binding time limits for sending transfer requests and receiving replies
- Shifts of responsibility will be removed
- *"Deadlines for the exercise of a person's right to an effective remedy against a transfer decision will be shortened"* (Progin-Theuerkauf, 2017, p.65)
- Responsibility criteria will be streamlined and new responsibility criteria for unaccompanied minors will be introduced
- *"Dublin system will be applied to recognized beneficiaries of international protection"* (Progin-Theuerkauf, 2017, p. 65)

A fair distribution mechanism would solve the issues of frontline states being overwhelmed and overcrowded hotspot migrant centres, and it would disincentivise member states from closing off their borders by building fences (Davis K. , 2020). Additionally, the recast extends the scope of the definition of a dependant, legal representation, includes guardianship rights for children, and reduces the length of detention for those refugees who will be transferred. Nevertheless, the recast also does not address the preferences of asylum seekers and it neglects the issues regarding different reception conditions, access to protection, and possibility for integration in different member states. According to ECRE, it is weak on responsibility-sharing and would maybe make procedures more complicated, which could result in discouraging member states from following the rules (European Council on Refugees and Exiles, 2016). ECRE clarifies that it "*does not rethink the fundamentally flawed principles underpinning the current EU mechanism for allocation responsibility for asylum applications across Europe, but instead reinforces many of the mechanism's weaknesses*" (European Council on Refugees and Exiles, 2016, p. 2). Maiani (2017) argues that the proposals "*made to streamline the Dublin procedures operate on several levels",* concluding, in accordance with several scholars, that there are two essential problems with the Dublin IV proposal: firstly, it is unsuitable to solve the issues that have troubled the Dublin

System and may even exacerbate them; and secondly, it contradicts fundamental rights standards (Maiani, 2017, p. 629).

8.2.   Advocacy coalitions and their positions

The European Commission and European Parliament

The period after 2015 is highlighted by the struggle for a paradigmatic change (Trauner, 2019). Applying the ACF, there have been two coalitions during the post-crisis phase. The European Commission, the Parliament and several northern member states, especially Germany and France promoted the relocation scheme to disencumber frontline member states. The antithetical coalition was formed by some member states of the Council, especially the Viségrad states and other central and eastern European member states. The Commission operates as a uniform actor, having the welfare of the whole union in mind; it therefore suggested the emergency relocation scheme. For that reason, the Commission can be considered as the main actor in the coalition because it has the right of initiative and determines the direction of the policy process. The EP adopted the emergency relocation scheme with 370 votes in favour, 134 votes against, and 52 abstentions. The majority of MEPs who encouraged the proposal were members of the socialist group S&D, the radical left group GUE/NGL, the Greens, the Christian-Democrats (EPP group), and the Liberal and Democrat members (ALDE group). The opposition composed MEPs from the conservative ECR group, the far-right group of Marine Le Pen (ENF), and the British members of the EFDD group. In addition to that, some MEPs of the EPP group voted against or did not vote on the relocation scheme, such as the Hungarian party members of Prime Minister Orbán, the Polish delegation, and other national delegations from eastern member states. Romania, Latvia and Slovakia, deviated from the EPP position and abstained or voted against too (VoteWatch Europe, 2015).

I would argue that the European People's Party (party with the largest number of seats in the EP) did not update their policy core even if their positions became a little more liberal and pro-solidarity, but the secondary aspects altered after the crisis. In the early 2000s, the EPP was in a coalition with the Council and espoused a more restrictive approach, rejecting proposals for more harmonization. The ALDE also joined the EPP-Council coalition on the topic of some directives, but after the crisis, the policy core beliefs were not transformed completely but the secondary aspects concerning the relocation were. The centre-left MEPs wanted more harmonization even back in the 2000s and so the policy core beliefs remained stable during and after the crisis. Regarding the (far) right-wing parties it is difficult to investigate their development because they have not been in the EP for such a long period, but based on their positions I would argue that the crisis did not modify their belief system; they already turned down harmonization and solidarity measures in advance. Viewing the EP as an actor without the party differences, the belief system

remained resilient during the post-crisis phase because the EP formed a kind of 'permanent' coalition with the Commission striving for more harmonization in the asylum system (reception, standards, application procedure etc.). The crisis only highlighted the liberal positions of the EP and the encouragement of the Commissions' proposals, which would repudiate the hypothesis that the crisis triggered change. However, if one takes a closer look at the parties in the European Parliament, e.g., the European People's party, the crisis led to change regarding the secondary aspects.

Political groups	Basic Beliefs	**Policy Core Beliefs** (basis to form coalitions)	**Secondary Aspects** (views to relocation scheme)
European People's Party (EPP)	Centre-right, Christian democracy, liberal conservatism, pro-Europeanism (Wolfram, 2019)	Solidarity, responsibility-sharing, more integration regarding a Common European Asylum System; solidarity between the member states, but it is also clear that not everyone who wants to come to Europe can come and stay ➔ therefore, the external border protection needs to be strengthened, quicker returns (VoteWatch Europe, 2015). EU must offer protection to refugees, EU should set up an effective CEAS, member states should implement existing rules, EU needs to tackle abuse or social fraud and needs to distinguish between refugees and economic migrants (EPPgroup, n.d.)	**Supporting the fairer distribution in the suggested emergency relocation scheme**
Progressive Alliance of Socialists and Democrats (S&D)	Centre-left, social democracy, pro-Europeanism (Wolfram, 2019)	Solidarity, responsibility-sharing, more integration regarding a Common European Asylum System; solidarity, S&Ds lead a pro-European majority calling for real European solutions, stronger European cooperation to deal with common challenges and overcome national divisions; EU needs a fair and common asylum and migration policy based on shared responsibility and solidarity (S&D, n.d.). Criticism of behaviour of member states which showed reluctance to accept the relocation scheme (VoteWatch Europe, 2015)	**Supporting the fairer distribution in the suggested emergency relocation scheme**

European Conservatives and Reformists (ECR)	Centre-right to right-wing, Euroscepticism, national conservatism, (Wolfram, 2019)	Non-solidarity, responsibility-shifting, less integration regarding a Common European Asylum System; EU member states need to stop finger pointing and threats and find a way to work together to find long-term solutions, providing more support to protect external border (strengthen FRONTEX), increase the rate of returns for failed asylum seekers, combat abuse of the asylum system, adopt EU wide measures which have the backing of all member states (European Conservatives and Reformist Group, n.d.; VoteWatch Europe, 2015)	Opposing the fairer distribution in the suggested emergency relocation scheme Group is against "*forcing the quotas on countries, fearing that it could build up trouble that will make more permanent actions harder to reach.*" Proposal: countries that do not wish to take part in the scheme should be asked to contribute in another way in order to assist the other countries (VoteWatch Europe, 2015)
Alliance of Liberals and Democrats for Europe (ALDE)	Centre, (conservative) liberalism, social liberalism (Wolfram, 2019)	Solidarity, responsibility-sharing, more integration regarding a Common European Asylum System; Group calls for increased solidarity and responsibility-sharing between member states, pushing for a European migration and asylum system, outsourcing management in third countries, strengthen Frontex (fight smugglers), open legal migration paths, defending a CEAS "*in line with EU fundamental rights standards*" (VoteWatch Europe, 2015; Rios, 2019)	**Supporting the fairer distribution in the suggested emergency relocation scheme**
European United Left–Nordic Green Left (GUE/NGL)	Left-wing to far-left, left-wing populism, soft Euroscepticism; (Wolfram, 2019)	Solidarity, responsibility-sharing, more integration regarding a Common European Asylum System; Solidarity, legal paths and cooperation, stronger defence of migrants' and refugees' rights (safe corridors for legal migration), reform of the Dublin System, cooperation with countries of origin, they condemn the militarization of the border (Rios, 2019; VoteWatch Europe, 2015)	**Supporting the fairer distribution in the suggested emergency relocation scheme**
Greens–European Free Alliance (Greens–EFA)	Green politics, regionalism, minority politics, pro-Europeanism (Wolfram, 2019)	Solidarity, responsibility-sharing, more integration regarding a Common European Asylum System; solidarity, share responsibility, fair asylum policy (common standards), sea-rescuing mission, reform of Dublin System, legal and safe migration paths, greater support for non-EU countries hosting refugees, demanding scrutiny on the implementation of border controls and any form of agreement with third countries to reduce migration (Rios, 2019)	**Supporting the fairer distribution in the suggested emergency relocation scheme**

Europe of Freedom and Direct Democracy (EFDD)	Right-wing to far-right, Euroscepticism, right-wing populism, direct democracy (Wolfram, 2019)	Non-solidarity, responsibility-shifting, less integration regarding a Common European Asylum System and more national sovereignty; Primary goal: the reduction in the powers of, or even the dissolution of, the European Union (Rendall, 2014), therefore against solidarity and responsibility-sharing and demanding more sovereignty	Opposing the fairer distribution in the suggested emergency relocation scheme
Europe of Nations and Freedom (ENF)	Right-wing to far-right, anti-immigration, Euroscepticism, nationalism, right-wing populism (Wolfram, 2019)	Non-solidarity, responsibility-shifting, less integration regarding a Common European Asylum System and more national sovereignty; Against solidarity and responsibility-sharing and demanding more sovereignty, anti-migration	Opposing the fairer distribution in the suggested emergency relocation scheme

Table 7: Overview European Parliament (Own compilation, 2020)

In October 2017, the European Parliament worked on a document called the Wikström report. It was to be the basis for interinstitutional negotiations, anticipating amendments to the Commission's proposition. Following Maiani (2017), it represents an alternative to the Dublin reform and a possible answer to the calls of the EP for a permanent and EU-wide, legally binding system of distribution based on fair and compulsory allocation. The EP confirmed a mandate for interinstitutional negotiations (European Parliament, 2020b). In contrast to the Commission's proposal, this report disclaims the sanction-based approach of the EC, but it also entails "*no free choice, no secondary movements and identification and screening responsibilities concentrated on the state of first irregular entry*" (Maiani, 2017, pp. 635-636).

While the EP constantly backed the Commission's proposal since 2015, the Commission slightly adapted its position on migration during the next years – even if it still suggested more integrative and harmonizing reforms. The alteration of the position can be observed if one analyses the annual State of the Union of the Commission President Jean-Claude Juncker. In September 2015 he clearly stated, going along with Angela Merkel's "*We can do it*", the aim was to provide help for those who were fleeing from war, terror and oppression. The next year's speech was biased by the Paris and Brussels terrorist attacks and emphasised a "*Europe that preserves our way of life*" and that European *"tolerance cannot come at the price of our security",* suggesting more border control (Duszczyk, Podgórska, & Pszczółkowska, 2019, p. 478). The terrorist attack in Paris and Brussels had a negative impact on the support for the quota in general in the European electorates and governments, because Muslims were associated with terrorism (Zaun, 2018).

In the second half of 2016, the position of the V4 (Viségrad-group: Czech Republic, Poland, Slovakia and Hungary) had already gained more understanding in Western European member states. It was also clear in 2016 that the Commission proposal would not reach an agreement in the Council after several attempts of pressuring the V4 to deviate from their position. Germany and Sweden had issues in their countries due to shifts in public opinion highlighting that these countries had already taken on too much 'burden'. "*The unyielding position of the V4, which made any truly common EU relocation impossible, coupled with the problems with the implementation of the scheme and an increased focus on security after the terrorist attacks, caused European leaders to start looking for different solutions"* (Duszczyk, Podgórska, & Pszczółkowska, 2019, p. 479). In 2018, Juncker suggested in his State of the Union steps to help the member states which are not able to deal with the asylum procedures under the Dublin Regulation. Those proposals entail the increase of the EU Asylum Agency budget and stationing more Migration Management Support Teams, especially to 'hotspots' like Italy and Greece. However, the Dublin Regulation remained unmodified (Davis K. , 2020).

To sum up, the European Commission and the Parliament were in favour of changing the policy core of the Dublin System, and pursued an approach which can be categorised with the following terms defining the policy core beliefs, namely 'solidarity, responsibility-sharing and more integration'. Both institutions endorsed the emergency relocation mechanism and the revision of Dublin, including a permanent emergency relocation scheme; their pro-solidarity position has been constant.

The Council of the European Union

This chapter examines the coalitions in the Council of the European Union. One could argue that the Council split into two sides. One coalition consisted of the countries in Western Europe, like the Netherlands and Sweden, which pursued the German *"we can do it"* position of Angela Merkel. They strongly supported helping refugees and 'burden-sharing' and other countries, which accepted to take refugees but only if all member states jumped on that train. On the contrary, the Visegràd countries strongly refused to accept the Commissions' reform plans, because "*they did not want to open their countries' door for Muslim refugees from Middle East and northern Africa"* (Trauner, 2019, p. 320). According to Trauner (2019), opposing the EU relocation scheme has become a key element for Eastern European politicians, which they use for the politicisation of asylum and migration driven by right-wing/new right and Eurosceptic movements.

As a reaction to the Commission's proposal on the emergency relocation scheme, the V4 organised a summit to work on a common position. They concluded in a joint statement that *"any proposal leading to introduction of mandatory and permanent quota for solidarity measures would*

be unacceptable" (Duszczyk, Podgórska, & Pszczólkowska, 2019, p. 472). As already mentioned above, the Council approved the emergency relocation by outvoting Hungary, the Czech Republic, Romania and Slovakia – even if there normally prevails an informal norm of consensus seeking in the Justice and Home Affairs Council. All the other member states voted in favour of the relocation scheme except Finland; due to procedural reasons, it abstained even if it backed relocation. The main reason for the vote without a solid compromise in advance was the endorsement by Poland (due to national elections and possible variances); otherwise, the vote would have been postponed. Using the qualified majority voting on such a sovereignty-issue was outstanding and this emphasises the complexity of the decision-making process on asylum issues. It was not just new that a decision was taken by QMV instead of unanimity; it also hardly ever happened that the 'new' member states from Central Europe, who hardly ever vote 'no' in the Council, coalesced to make a stand against the 'old' members on such a pivotal policy. Due to this fact, this position caused outrage in other member states and led to suggestions from the Netherlands like creating a mini-Schengen within Western Europe if not all Schengen countries agreed on solidarity and 'burden sharing' (Trauner, 2019; Duszczyk, Podgórska, & Pszczólkowska, 2019). Hence, due to the crisis, secondary aspects of the relocation scheme were updated in the Council and it joined the EC-EP coalition. The debate of the Council about the permanent relocation scheme is more informative in the context of the analysis because the 'legislative train' of the proposal of an emergency relocation mechanism derailed. "*A fundamental dispute surrounded the mandatory relocation of refugees across EU member states, [...]"* (Duszczyk, Podgórska, & Pszczólkowska, 2019, p. 471).

Furthermore, during the crisis, the member states and the EU institutions were aware that if the CEAS broke down, it would severely overstrain the Schengen system. Following Biermann et al. (2017), a functioning CEAS and Schengen are working as a collective good in this context, and member states prefer to preserve it, especially in comparison to dis-integration. Germany and the V4 agreed on the importance of the preservation of Schengen as a 'key strategic objective'. Simultaneously, the current institutional and regulatory CEAS framework with the Dublin policy core was not able to cushion the external shock. *De jure,* the functioning of the CEAS led to an unequal distribution of the high number of refugees between the member states. Some member states were 'overburdened' and some were hardly affected. However, due to the wave-through approach of some member states, Dublin was *de facto* suspended. *"As a result, even though the de jure status quo is still in place, de facto the EU witnessed a (partial) suspension of the Dublin and Schengen systems. Thus, despite EU member states' joint preferences to preserve Schengen and a common asylum system, they were unable to agree on a joint response"* (Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017, p. 14).

The following paragraphs examine the positions regarding a permanent relocation scheme in detail from 2015 until December 2017, when the President of the Council, Donald Tusk sent out letters to the heads of state and government, proposing to dismiss the mandatory quotas (Trauner, 2019). The discussion about a permanent relocation scheme based on a quota started in September 2015 and in January/February of 2016 it became clear that this was not possible to achieve. After the enactment of the emergency relocation schemes, the V4 did not modulate their position on relocation and were supportive of external border protection, cooperation with third countries, and declared financial aid (Bauerová, 2018). The Commission tried again to achieve harmonization and published its draft on a reform of the Dublin III Regulation in May 2016, which still contained the first country of entry-principle but with an add-on 'corrective allocation mechanism'. Additionally, there were some other measures which aimed at reducing secondary movements of asylum-seekers. This amendment was highly controversial because it would lead to a long-lasting and legally binding relocation scheme with a clearly defined redistribution key. The allocation mechanism was to be activated if a state reaches 150% of the number defined in the key reference, which means that if it (over-)fulfils its quota, it can demand relocation of the asylum-seekers to other member states (Trauner, 2019; Paul & Roos, 2019).

The Council strongly promoted the Slovak Presidency's three-track approach for evaluating the CEAS reform *("examining the Eurodac regulation and on the European Union Agency for Asylum regulation; discussing the Dublin regulation and the Asylum Procedures regulation, Reception Conditions directive and Qualification regulation; technical examination of the regulation establishing a Union Resettlement Framework"* (European Parliament, 2020b)). In addition to that, since October 2016 – when the Slovak Presidency started, less integrative mechanisms have been negotiated too, like the 'flexible solidarity' concept proposed by the V4 at the European Council in Bratislava in September 2016. Flexible solidarity means that the distribution of refugees would be unsolicitous and by choice, and instead of receiving more refugees, member states could contribute financial support and expertise (Zaun, 2018). Frans Timmermans, Vice President of the Commission replied that *"there is no à la carte solidarity in this Union"* and the Commission suggested a 'solidarity contribution' or 'financial solidarity' of 250.000€ for each asylum-seeker turned down by an EU-country in the relocation system. The state asking for relocation would receive the proposed fee. V4 politicians reacted with phrases like "*blackmail"* and "*violation of the rights of EU member states"* (Duszczyk, Podgórska, & Pszczółkowska, 2019, pp. 475-476). This was the peak of the debate about the permanent relocation system and conflict over refugees in a highly politicised environment.

One could argue that it is important to have in mind that those countries, which had been behind the Iron Curtain, did not participate in any discussions and legal processes concerning immigration and the challenges of integration. In accordance with a Carnegie Europe report on

this topic written by Lehne (2016), the "*crisis revealed an enormous diversity in societal attitudes about migration. The largely globalized societies of Western and Northern Europe, which already hosted large immigrant communities, contrasted with the societies of Central Europe, which had lived in relative isolation over decades and were consequently much less prepared to deal with a large influx of foreigners*" (Duszczyk, Podgórska, & Pszczólkowska, 2019, p. 473). Furthermore, Trauner (2016) argued that this conflict exposed 'great disunity' in the EU. The V4 acted in a united manner against refugees, the European Commission, the majority of the parties of the European Parliament and the majority of the member states represented in the Council. Even if Poland consented to the emergency relocation, the country did not accept any refugees after a change of government. Moreover, the terrorist attacks in Paris and Brussels encouraged the V4 in their anti-immigration position, which pictured refugees as a threat to national security, terrorist danger, and epidemiological threat. These developments did not facilitate the negotiations and the situation on a European level regarding the 'coalition of the unwilling' (Duszczyk, Podgórska, & Pszczólkowska, 2019). Also, Biermann et al. (2017) illustrated that the member states which received most asylum applications and were 'overburdened' (affected states – AS) had a strong preference for altering the policy core beliefs, while less affected member states favoured the persistence of the status quo – no change of the policy core beliefs (non-affected states – NAS).

Table 2. Positional preferences during the refugee crisis (as of March 2016)

	Affected states (AS) – high migratory pressure		Non-affected states (NAS) – low migratory pressure
	First arrival states	**Destination states**	
	Cyprus, Greece, Italy, Malta.	Austria, Belgium, Bulgaria, Denmark, Germany, Finland, France, Luxembourg, Netherlands, Sweden.	Croatia, Czech Republic, Estonia, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom.
Preference	Political reform (burden-sharing)		*De jure* status quo

Table 8: Positional preferences during the refugee crisis (as of March 2016) (Biermann et al., 2017, p.18)

The position of the Western European member states and EU institutions also altered over time. In the last five years, there has been a tendency in European member states that governments pursue a more restrictive approach towards immigration and asylum due to the anti-immigrant attitudes of large parts of the electorates. Especially in times, where the numbers of asylum applications are rising, electorates tend to espouse restrictive policies to reduce the applications again. These claims transfer into policies, which are mostly advocated by right-wing populist

parties (Zaun, 2018). National preferences of the member states have an impact on the outcome on a European level. In this context it is crucial to note, that Germany received almost half of the asylum-seekers who reached the EU from 2015 until 2016, followed by Hungary (exercising unlawful asylum practices), Sweden and Austria. In proportion to the size of the population, France, Slovakia, Poland, Czech Republic, the Baltic States, Italy and Greece received a smaller share. Even if Italy and Greece are first-entry countries, they can be considered as transit countries because they wave refugees through or countries where refugees 'get stuck'. After Germany announced the suspension of Dublin, Hungary became a non-affected country too (Zaun, 2018; Zaun, 2017).

According to Duszczyk, Podgórska and Pszczólkowska (2019), in 2015, Germany's position mainly stressed humanitarian arguments, welcoming refugees and providing support, while in 2016 the focus shifted to minimising the number of refugees who tried to reach Germany. These developments were characterised by consultations with Turkey to shut down the Western Balkan route. During 2016, the nationalist, right-wing populist *Alternative für Deutschland* (AfD) was successful in several federal states, reaching between 15% and nearly 25% in state elections. Besides the AfD´s criticism of Merkel's open border and illegal entry policy, politicians from the CSU also disapproved her approach with proposals of a cap on receiving refugees. Simultaneously, the endorsement from the electorate for Merkel's policies dropped, especially after the sexual assaults and robberies on New Year's Eve in Cologne, committed by Northern African men, some of them asylum-seekers. In March 2016, Merkel's popularity increased again due to policy restrictions emanating from a reform of legislation on asylum and the EU-Turkey Statement. The electorate put the government under pressure to reduce the number of asylum seekers. For that reason, Merkel also pushed for the reintroduction of border controls and initiated EU policies, which would reduce the number of refugees entering the EU (Zaun, 2018). After the elections in 2017, where the CDU/CSU (Christlich Demokratische Union lost some votes and the AfD achieved 12.6%, the position on immigration became even more restrictive (e.g., a limit of 220.000 refugees per year) due to public opinion and internal politics. But the public perception and view in Germany was biased because of the disappointment in not finding a common European solution and member states who did not want to 'share the burden' (Duszczyk, Podgórska, & Pszczólkowska, 2019).

The developments in Austria were similar – after the SPÖ/ÖVP went along with the German example and opened its borders, the right-wing populist FPÖ (Freiheitliche Partei Österreichs, Freedom Party of Austria) grew in popularity in opinion polls during and after the summer months of 2015. While the FPÖ gained more votes, the government lost popularity and the SPÖ/ÖVP government shifted to a hardliner view in Europe, promoting fences to keep refugees out and introducing the concept of yearly caps (Zaun, 2018). In 2016, Austria organised a summit of EU

and non-EU countries to find solutions on reducing migration flows (Duszczyk, Podgórska, & Pszczólkowska, 2019). Due to those developments, Germany and Austria, countries which normally approved the Dublin Regulation, now changed their position and demanded a permanent refugee relocation system. Given the fact that the Austrian government modified its approach, Chancellor Fayman resigned in May 2016. The ÖVP and SPÖ candidates for presidential election did not qualify for the second round – and surprisingly, the run-off was between an FPÖ and a Green Party candidate. After the national elections in 2017, Sebastian Kurz (ÖVP) formed a government coalition with the FPÖ, because the party reached 25%, nearly as much as the Social Democratic Party (Bundesministerium für Inneres, 2017; Inneres, 2016). These national developments show how the shifts in public opinion impinged on party positions. Welt.de published a statement of the Austrian chancellor Kurz in 2017, where he stated that the relocation quota system had failed and that *"the EU should go back to a system based on voluntariness within the EU and introduce more and stricter border controls at the external borders towards the outside world"* (Trauner, 2019, p. 269).

While the pressure in Sweden was not as significant as in Germany or Austria, it still also promoted at the high point of the crisis re-introducing border controls and initiating policies that were more restrictive. The Swedish government aimed at providing only minimum standards instead of having the most liberal asylum system in Europe to become less attractive for refugees and reduce the number of applications (Zaun, 2018). Sweden also altered its welcoming position in 2016 and limited family reunification and permanent residence possibilities for refugees (Duszczyk, Podgórska, & Pszczólkowska, 2019). The Swedish government stated that 10.000 new asylum applications every day were unmanageable for a country with only 8 million inhabitants. For that reason, the government demanded a European solution and a more even distribution of refugees. Italy and Greece also preferred the permanent quota compared to the Dublin System. However, even if the recent system places all the responsibility on them, those countries did not participate actively in the debate because the actual numbers of asylum seekers were relatively low. The criticism was addressed to the EU and other member states and therefore, the political pressure was different and not as high as in Austria and Germany (Zaun, 2018). In contrast, Geddes (2018) explains that the increased popularity of anti-immigration political parties cannot be associated with a surge in anti-immigration atmosphere in the EU. The European Social Survey analysed the development from 2002 until 2016 in 14 countries: in 10 countries the willingness to accept 'immigrants from poorer countries outside of Europe' increased slightly and during 2014-2016 – climax of the crisis – attitudes stayed relatively stable or favourable, with Austria and Poland as an exception. But the high level of salience of the migration issue explains the increased encouragement for right-wing populist parties (Geddes, 2018). While especially Germany, Austria and Sweden demanded solidarity, 15 member states disliked more

asylum cooperation and so they blocked the introduction of such a relocation system. The intergovernmental conflict rooted in the differential affectedness of the member states and their interests arose out of their geographical and policy position (Schimmelfennig, 2018a). According to Zaun (2018), several scholars argued that the accession of the eastern European member states did not have a significant effect on EU decision-making because these member states were usually not working together as a block with common interests and they have not been very vocal. As previously noted, in the context of the CEAS and regarding the permanent relocation scheme, this assumption has been challenged. All four countries have right-wing governments consistent with the populations' anti-immigrant preferences, which are based on the lack of contact with immigrants and the culturally and ethnically relatively homogenous societies. The V4 group argued strongly and openly against the proposals and challenged the concept of refugee protection itself. "*This highlights that the accession of 13 Member States since 2004 has clearly diversified the EU, both in terms of values and cleavages*" (Zaun, 2018, p. 58).

There have been strong concerns from the beginning of the crisis against receiving and integrating refugees due to public opinion (Zaun, 2018). Although France strongly sustained the idea of solidarity in 2015 and backed the Commission proposal under the government of Francois Holland, at a later stage, the country held an ambiguous position on the quota due to political pressure from the right-wing Front Nationale. Holland criticised the Eastern European countries and the position of the United Kingdom, where Brexit already dominated the political landscape. He made commitments to accept more refugees – and even after the terrorist attacks in Paris, he advocated helping refugees. In contrast to France, the Spanish deputy Prime Minister Sáens de Santamaría stated that there would be limits on Spanish solidarity and Spain was openly against the permanent relocation scheme (Ondřej, Mosneaga, & Walter, 2018). The table below provides insights into the positions of the other EU member states, which have not been outlined in detail.

Table 1. Number of asylum applicants per member state in 2015

Affected States (AS)				Non-Affected States (NAS)			
State	Number of asylum applicants per 100.000 citizens	Number of accepted asylum claims per 100.000 citizens	Member state position on permanent burden-sharing mechanism	State	Number of asylum applicants per 100.000 citizens	Number of accepted asylum claims per 100.000 citizens	Member state position on permanent burden-sharing mechanism
Sweden	1664	330	No reservations	Ireland	69	7	No information
Austria	1025	175	Scrutiny reservations	United Kingdom	59	21	No information
Finland	597	31	Scrutiny reservations	Poland	38	2	General reservations
Germany	588	174	No reservations	Spain	29	2	General reservations
Luxembourg	447	33	No reservations	Estonia	17	6	General reservations
Malta	430	291	No reservations	Latvia	16	4	General reservations
Belgium	397	93	General reservations	Czech Republic	13	4	General reservations
Denmark	369	175	Opt out	Slovenia	12	2	General reservations
Bulgaria	284	78	Scrutiny reservations	Lithuania	11	3	General reservations
Cyprus	267	187	No reservations	Portugal	9	2	General reservations
Netherlands	265	97	No reservations	Croatia	5	1	General reservations
Italy	139	49	No reservations	Romania	5	2	General reservations
Greece	121	37	No reservations	Slovakia	4	1	General reservations
France	114	31	General reservations	Hungary*	1754	5	General reservations

Source: Eurostat 2016a; Eurostat 2016b; Council of the European Union 2016; authors' compilation.

*Table 9: Number of asylum applicants per member state in 2015 (Biermann et al., 2017, p.16) *"Note: We do not consider Hungary in the group of AS, despite a significant number of asylum claims, since Hungary rejects almost all of them. We hence consider the de facto migration pressure in Hungary to be low, as very few refugees actually get to stay in the country. The number of accepted asylum claims in relation to the overall population size is displayed in the middle column" (Biermann et al., 2017, p.16).*

The 15 member states, which turned down the quota, tried to avoid creating similar situations and political crises as had happened in Germany, Austria and Sweden (Zaun, 2018). To conclude, the dynamics within the negotiation process are more comprehensible keeping the previously stated national developments in mind. Affected states like Germany, Austria and Sweden tended to push towards more cooperation to "*alleviate electoral pressures resulting from populist mobilization of voters who were unhappy with high numbers of asylum applications*" and non-affected states with "*an initially vague position on the temporary relocation scheme opposed the permanent system*" (Zaun, 2018, pp. 55-56). In addition to that: "*All suggestions either await political decision, lack implementation, or have been significantly watered down. […] Member state compliance is lacklustre at best*" (Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017, p. 12).

At the Bratislava Summit 2016, Martin Schulz (EP President at the time) stated publicly, as the first Western European high-ranking politician, that the relocation mechanism was not functioning properly and other solutions needed to be found, especially solutions proposed by those

countries, which rejected the relocation mechanism. The V4 had an impact on the development of asylum policy because even Germany slowly doubted that this system could be part of the solution. The negotiations on a Dublin IV system were extremely cumbersome and slow; especially Estonia, Bulgaria and Slovakia strongly disliked the proposed idea of responsibility-sharing (Duszczyk, Podgórska, & Pszczółkowska, 2019). At the December 2016 European Council meeting the Maltese Presidency declared the CEAS and the reform of the Dublin Regulation as a major priority, *"following up on the implementation of measures which have already been agreed to"*. In June 2017, the JHA Council meeting negotiated a compromise on the responsibility and solidarity principles and reviewed certain paragraphs of the Dublin Regulation (European Parliament, 2020b).

In December 2017, the Council referred to the Estonian Presidency's attempt to find an *"agreement on the more consensual items in bilateral contacts with delegations and to find more common ground on issues where the compromise had not proved possible"* (European Parliament, 2020b). At the same time, Donald Tusk assisted the Eastern European member states. The coalitions are similar to the ones for the emergency relocation; the Commission, the Parliament and a range of northern and western member states in addition to Italy and France disclaimed Tusk's suggestion (Trauner, 2019). Tusk's opinion did not just support the V4; it could also be interpreted as an attempt to sustain EU unity on issues about asylum and migration. As already stated, the majority of the MEPs encouraged the draft for a mandatory relocation system based on the suggested specific criteria (VoteWatch Europe, 2015).

Dimitris Avramopoulos, EU migration commissioner at the time, criticised Tusk's paper in that it ignored and denied all the progress, which had been made in the previous three years and undermined *"one of the main pillars of the European project, the principle of solidarity"* (Duszczyk, Podgórska, & Pszczółkowska, 2019, p. 480). Italy's Interior Minister Matteo Salvini promised the Italian population in 2018 that Italy would drastically decrease the number of refugees and migrants entering the country, contrary to the Dublin Regulation. Besides, he suggested creating deportation centres and taking legal actions against NGOs which were saving refugees in the Mediterranean and helping them to reach the Italian border. As a result, he banned boats carrying refugees from berthing at Italian ports. The evolvement of the anti-immigration axis discountenancing the EU's pro-immigration laws and policies became more powerful and gained popularity (Davis K. , 2020). Taking a look at the European Council statements it also becomes clear that the thematic priority shifted from 2015 when the first priority was to save lives, rescue and protect migrants, 2016 when the EU-Turkey deal was at the centre of attention and 2017 when the discussion was about Libya closing the route. During those two years, the number of refugees entering the EU dropped but it affected neighbouring countries of Europe. Moreover, the weak performance of the implemented relocation scheme due to technical complications and non-

compliance highlighted the lack of contribution and backing of the member states (Duszczyk, Podgórska, & Pszczólkowska, 2019).

The Bulgarian Presidency in 2018 tried to accomplish progress in reforming the CEAS, including the Dublin Regulation – focussing on individual articles of the proposal and leaving the question of quotas for last. Hungary declared that it would put forward amending proposals concerning the Regulation, which stressed security, a harsh expulsion policy and dismissal of a mandatory quota. In June, the European Council Conclusions underlined the need for a consensus on the revision of the Dublin Regulation, *"based on a balance of responsibility and solidarity"* and the Austrian Presidency was negotiating this balance in bilateral meetings (European Parliament, 2020b). Despite the tense circumstances, in the middle of the year 2019, not much progress had been made and no compromise was accomplished. Moreover, some countries reconfigured their opinion due to national government changes, like Austria or Slovenia. Italy was also not supportive of the proposition because it forced an automatic and obligatory relocation mechanism. During the 2019 EU summit, the member states declared: "*A consensus needs to be found on the Dublin Regulation to reform it based on a balance of responsibility and solidarity, taking into account the persons disembarked following Search and Rescue operations"* (Duszczyk, Podgórska, & Pszczólkowska, 2019, p. 479)*.*

In 2019, the negotiations on a Dublin Regulation recast were still deadlocked regarding relocation and shifted priorities to externalisation of migration control to third countries. The Commission had to *"drop its reflexive approach to reforming the Dublin system even before it published its reform proposal"* (Paul & Roos, 2019, p. 13). The Finnish Presidency attempted to make progress in forming an EU-wide relocation scheme with sufficient financial incentives and monitoring migration routes. In November 2019, it "*reiterated the need for a crisis mechanism for supporting Member States under specific pressure, building on a holistic and effective approach to handling the situation*" but in October 2020, the 'legislative train' of the revision of the Dublin System derailed due to the Council's position as the 'blocking institution' (European Parliament, 2020b). *"The crisis of the EU's asylum policy mirrors the ideological conflicts involved in transforming the EU from a primarily regulatory polity into a political Union"* (Lavenex, 2018, p. 1208).

8.3. Development of soft and hard law

After the crisis in 2015, due to the political divisions of the participating actors within the subsystem, the number of soft law acts increased and exceeded – in comparison to the period before – the number of hard law acts. However, according to Saurugger and Terpan (2020), some of those acts had a preparatory function because they could generate hard law instruments (hard law in the making), but several acts were EP resolutions demanding legislative action as a response to the crisis situation. Nevertheless, a significant number of acts, which had been

adopted after 2014, could be perceived as compensation for the lack of hard law within the CEAS framework and therefore action plans and recommendations of the Commission, declarations and conclusions of the European Council were pivotal. Saurugger and Terpan (2020) labelled the crisis as a strong one. 28 member states registered 662.960 asylum seekers in 2014, compared to 1.322.845 in 2015, 1.260.910 in 2016 and 712.235 in 2017. The rise in the numbers was surprising and there was an urgency to solve the crisis for humanitarian reasons. The high number of people who drowned in the Mediterranean, the inapplicability of Dublin III and the political impact of the crisis highlighted the seeming threat to the system. Even if a crisis happened, the creation of a high number of hard norms failed to appear, but the creation of soft law was triggered, not only in the form of recommendations, also in the form of soft agreements like the EU-Turkey deal (Saurugger & Terpan, 2020).

Cardwell (2018) examined several post-crisis policy documents which emphasised that less legal instruments defined by the treaties should be used and more undefined 'tools' should be applicable. The development of the increasing use of soft law is problematic because it operates outside of the legal framework. Therefore, it is more difficult to track and the usage of the catch-all term 'migrant' makes it challenging to determine whether the applied tools are compliant with international law with regard to protection. There are alternatives to fulfil policy goals. According to Trubek & Trubek (2005), these can be summed up by the term 'new modes of governance' or 'new governance', which might be able to facilitate variance by "*shaming, diffusion through mimesis or discourse, deliberation, learning and networks"* (Cardwell, 2018, p.68). Since the early 2000s, instruments and strategies under the open method for coordination (OMC) have been introduced. This also had an impact on migration policy, because it put coordination at the centre rather than harmonization or integration. The language used in the treaties also mirrored this approach. New governance is used in some areas, where member states do not want to hand over their sovereignty, legalisation is limited, and multiple actors beyond the EU institutions are involved. This applies for some features of migration management (Cardwell, 2018). One could argue that a weak implementation of existing norms could engender a higher amount of hard law acts in times of crisis, as happened during the economic and financial crisis. In the aftermath of the migration crisis, the reverse occurred. Soft law was adopted to compensate the very poor or non-existent implementation of a hard law framework. In 2013, the European Commission published a report of their examination of the execution problems of the 2008 Directive on common standards and procedures in member states for returning illegally staying third-country nationals. According to Saurugger and Terpan (2020), during this period, all member states had at least breached the Return Directive once with Cyprus, Greece and Portugal. Nevertheless, these violations did not lead to passing more hard law, but have rather enhanced the ongoing adoption of soft law (e.g., communications of the Commission). Bauböck (2018) concluded that

the failure to comply with the Dublin System caused the enactment of soft law recommendations instead of a hard law reform.

Moreover, the DG Migration and Home Affairs published a report in March 2016, claiming that 17 member states had breached the Dublin Regulation at least once with Greece, Malta and Hungary. The main violations were due to the insufficient information available for applicants, the non-establishment of a specialized Dublin unit, the disruption of family unity, and the absence of an interpreting service provided to asylum applicants. As illustrated in the previous chapters, from 2015 until 2017, the Commission published several recommendations for compensating the non-application of the Dublin System (Saurugger & Terpan, 2020). According to Cardwell (2018), two examples emphasise that less formal tools are able to achieve similar effects. Firstly, the use of re-admission-agreements between the EU and third countries has increased in recent years even if they have been criticised due to creating a blurry image of the protection of human rights in third countries and the deficiency in transparency of their implementation. The second example is the 2016 EU-Turkey deal because it *"was not put in place via the process set out in Treaty but rather through informal means"* (Cardwell, 2018, p. 72). It is a statement between both parties rather than an agreement because it does not entail legal consequences. Accordingly, it avoids legal obligations under EU and international law because its lawfulness cannot be challenged in court of law and the principle of non-refoulement in international law is avoided too.

As previously mentioned, even if Germany and France, two big member states, and two supranational institutions espoused policy change, the implementation of hard law could not be triggered. The member states in the Council represented highly diverging positions and were unable to find a compromise on binding agreements. The Commission proposed policy solutions since the outbreak of the crisis, playing the role of the policy entrepreneur, but there was no mutual consent on a common solution. The large coalition between the Commission, the Parliament and some bigger member states had not been strong enough to change the policy core and establish hard law. Hence, the adoption of soft law was the compensation mechanism (Saurugger & Terpan, 2020).

8.4. Findings

Advocacy coalitions and belief systems within the asylum policy subsystem post-crisis 2015

Institution	Coalition	Policy Core Beliefs	Secondary Aspects
European Commission	EC-EP-MS	Solidarity, responsibility-sharing, more integration ➔ Relocation scheme	Pro emergency relocation
European Parliament (majority of MEPs)	EC-EP-MS	Solidarity, responsibility-sharing, more integration ➔ Relocation scheme	Pro emergency relocation
Council of the European Union (certain member states (MS), e.g., Germany, Sweden)	EC-EP-MS	Solidarity, responsibility-sharing, more integration ➔ Relocation scheme	Pro emergency relocation
Council of the European Union (certain member states, e.g., V4)	MS	Non-Solidarity, responsibility-shifting, less integration ➔ Dublin System	Pro emergency relocation (except: Hungary, Czech Republic, Slovakia, Rumania)

Table 10: Application of the ACF (Own compilation, 2020)

In accordance with the ACF, external shocks could shift the agenda setting. The CEAS crisis as an external shock shifted the agenda setting and made asylum policy for a short period a priority. The change of the asylum policy core – the Dublin Regulation – was the dominant issue on top of the agenda in the subsystem. As a consequence of the CEAS crisis, the dominant problems in the policy field shifted in priority because some aspects of the Agenda on Migration were not anymore as important as finding a temporary solution to get out of the crisis.

The advent of a permanent relocation mechanism would have been a major policy change because it had abolished the non-solidary policy core belief and Dublin approach and replace it with a solidary and responsibility-sharing one. The CEAS crisis in 2015 was not powerful enough to encourage policy entrepreneurs to come to terms with a far-reaching policy change. The participating actors were unable to reach an agreement even under circumstances which forced them to take action. After 4 years of negotiating, in 2019, the Commission withdrew the proposal on a permanent relocation mechanism. "*After almost two decades of EU asylum policy-making, still only a few Member States take the largest share of refugees in the EU and attitudes on responsibility-sharing among Member States have barely changed. States that receive smaller numbers of asylum-seekers are not ready to make any commitments that could raise their share of asylum-seekers in the future*" (Zaun, 2018, p. 57).

About the coalitions

According to the ACF, actors seek allies with people who have the same policy core beliefs. In the asylum policy subsystem on EU level, actors seek allies who are in favour of 'solidarity, responsibility-sharing and more integration' or rather endorse 'non-solidarity, responsibility-shifting and less integration'. These two beliefs transfer to the policies of a permanent relocation scheme and the Dublin System. Based on these two policy core beliefs, the coalitions have been formed in the European Parliament and the Council, based on the Commission's proposal. Comparing the pre- and post-crisis phase, the coalition structure transformed. Before the CEAS crisis in 2015, the Council formed the dominant coalition with the centre-right MEPs and the Commission formed the conflicting coalition with the centre-left MEPs. After 2015, the European Parliament updated its position and the majority of the MEPs seconded the Commission. In this context, it is pivotal to stress the transformation of policy core beliefs and secondary aspects of the European People's Party, because after 2015 they supported the emergency relocation mechanism and common solutions which strengthen solidarity and responsibility-sharing between the member states. Therefore, the Commission and the Parliament formed a stable coalition, which shows that the coalitions had not been resilient over time.

Moreover, the Parliament and the Council differ in one pivotal aspect – the degree of consensus needed for policy change. As the European Parliament votes with simple or absolute majority, it can be viewed as a unified actor in this subsystem who advocated for more solidarity between the member states. On the contrary, even if the Council could decide legally with qualified majority, it decided with an informal consensus on such highly sensitive topics. Major policy change needs consensus in the Council. This explains why only minor policy changes – changes in secondary aspects e.g., the emergency relocation scheme (due to the disregard of the informal consensus) – were the result of the post-crisis response. A revision of the Dublin System would need a conversion of policy core beliefs from non-solidarity and responsibility-shifting to solidarity and responsibility-sharing in many member states and this modification in the belief system cannot only be triggered by a crisis, which does not affect all member states equally. Moreover, the openness of the political system is a key factor for change. It is very difficult on a European level to achieve major policy change, because three actors are involved and the two decision-making venues, the Parliament and the Council would need to develop similar policy core beliefs.

After the implementation of the emergency relocation mechanism where four member states have been outvoted ignoring the informal consensus, the debate became highly politicised and conflictual. A clear division can be observed between the V4 and further Central European Countries, on the one hand, and on the other hand, Western European countries, the European

Commission and the Parliament. Countries which received or would receive a smaller share, were in favour of unilateral strategies and refused to accept the quota system; this would have allocated further responsibilities for refugees for them, as they tried to avoid pressures (Zaun, 2018). During the post-crisis phase, the coalition structure within the Council was in transition too: member states adjusted their policy core beliefs due to national elections and new governments. This makes it extremely difficult to find consensus on EU level because the policy core beliefs are not stable and so the advocacy coalitions are constantly slightly changing. Furthermore, even if large and wealthy member states have high resources in the EU, they were still unable to influence the EU asylum policy core. The ACF argues that the more resources a state has, the higher the impact – this cannot be confirmed within the CEAS.

Furthermore, changes in systematic governing coalitions also played an important role because the CEAS crisis influenced political structures during the next four years. After the crisis in 2015 and its political responses and implications, many countries distorted shifts in public opinion. The development can be pictured as a vicious cycle, because the non-adoption of a relocation scheme or another common European solution led to an overstraining of a few member states, which pushed for solidarity. In the light of these facts, the governments and the population felt politically left alone by the Union and were unable to deal with the number of refugees and asylum seekers properly. The political climate varied, right-wing populist parties achieved success and the policy core beliefs of the dominant governing parties slightly adapted. This can be observed in the post-crisis period, when e.g., Austria updated its policy core belief because of national elections and changes in government, which adapted their policies to the prevalent public anti-immigration mood. As another example, the pro-emergency relocation vote of Poland can be alluded to and the later on rejection of the permanent relocation scheme due to national elections. Consequently, politics on a European level became either more restrictive or regarding the relocation mechanism, political stalemate was the consequence. Several other 'crisis situations', like the terrorist attacks in Brussels and Paris also influenced the discourse about migration, integration and security, and had an impact on the political structures and policy core beliefs, making it more complicated to achieve progress, especially regarding a compromise on a revision of the Dublin System or a permanent relocation scheme.

About policy change

The adoption of the emergency relocation mechanism can be categorised as a minor policy change and a change of secondary aspects in the belief system. Major policy change which would have provoked a change of policy core beliefs did not happen. Sabatier and Jenkins (1993) argue that this needs significant perturbations to the subsystem. The perturbations were significant, but did not affect the whole subsystem even if the Dublin Regulation was suspended,

only certain actors which participate within the subsystem have been significantly affected. The affectedness of the member states by the crisis and its socio-economic consequences varied a lot throughout the Union. Therefore, the political will to push for a modification of the policy core was not strong enough. The original Dublin Convention was signed on 15th of June 1990, replaced by the Dublin II Regulation in 2003 and since 1 of January 2014, the Dublin III Regulation has been in force. This demonstrates the strengthening of the policy core belief, that is non-solidarity and responsibility-shifting, over time and its stability and resistance to change.

According to the ACF, external shocks also might influence aspects of policy core beliefs of an advocacy coalition. This also happened during the post-crisis period. Looking at the Council, all member states, except four of them, voted in favour of the emergency relocation scheme. This was not a change in policy core beliefs but in secondary aspects and also more member states than before the crisis approved a permanent one. After the crisis, 13 member states were in favour due to their 'solidarity, responsibility-sharing and more integration'-policy core belief. However, as already noted certain member states updated their policy core belief again over time like Austria or altered secondary aspects, like Germany or Sweden. Changes in public opinion, new governments on national level and other external shocks can be perceived as the main reasons for major or minor policy change. In addition to that, after the crisis, not only the emergency relocation scheme as a change in secondary aspects can be noted, but also amendments to budget allocation were a result of the crisis.

Viewing the Council as a unified actor that created and shaped the policy core belief, it is unlikely, as clarified by Sabatier and Jenkins-Smith (1993), that the dominant policy core belief of the political programme will adapt. As previously discussed, before the crisis, the Council was part of the dominant advocacy coalition with the European Parliament, especially with the European People's Party. As the EP consists of several parties which already had different policy core beliefs during the creation of the CEAS, it is likely that some of them would modify their policy core beliefs. This happened over time and so the EP left the coalition with the Council and joined a new one with the Commission. The Council can still be characterised as the dominant actor within the subsystem, which is in power due to the informal consensus. To sum up, even if some member states changed their policy core belief, the majority stuck with the policy core belief which dominated the asylum policies since their earliest improvements. Moreover, this development illustrates that even if the EP gained power over time and updated its policy core belief, it is still not able to change the policy outcome because the member states are more influential.

Through external shocks, new groups could be mobilised or groups could either suppress or promote the new issue. This also happened post-crisis because the V4 as a 'new group' successfully influenced the discourse and succeeded in engaging other member states with their

restrictive 'non-solidarity and responsibility-shifting' policy core belief. It was a new political trend that the new eastern European and smaller member states were opposed to the larger, Western European ones. The political division between the member states also had an effect on the European Commission, as sketched in the State of the Union speeches of Jean-Claude Junker. The policy core belief of the Commission remained stable; it was still striving for harmonization, but it engendered a weakening of the political will for introducing solidarity mechanisms and then other policies became priority due to other external shocks and societal developments. Focussing on the Dublin Regulation, it does not mean that this led to a more restrictive approach; it means that the policy core maintained resilient and the non-adoption of any different system led to a political stalemate, dominated by non-solidarity, responsibility-shifting and less integration. One policy which became more prioritised within the CEAS was the returning of 'irregular migrants' and then the EU pursued a more restrictive approach and passed soft law, non-binding documents, like the EU Return Handbook, to accomplish its objective. However, the „*shift towards soft law has not altered the EU's return policy in a profound way. Yet, it has managed to 'convert' EU return policy by emphasizing a particular interpretation of existing hard law (towards more restrictive practices and a stronger focus on 'efficiency')*" (Slominski & Trauner, 2020, p. 1).

As a consequence of the CEAS crisis, no reform dynamic, which would have led to common solutions with a different policy core belief, can be observed, even if the non-reform was and still is problematic for the Schengen system in several aspects. The member states did not share an encompassing common preference for a collective policy response. The affected member states pushed for policy change and the non-affected ones blocked the demands for policy change due to its low non-agreement costs. Any strategy used by the affected states to find a consensus on policy change through issue-linkages or side payments are likely to face resistance; the more politicized and mobilized anti-immigration governing parties are present in the non-affected member states (Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017). The rise of populism in several countries, e.g., Germany, Austria, Sweden and the V4 further politicized the issue (Niemann & Zaun, 2018). Some EU countries advocated receiving refugees in the beginning, while over time the shifts in public opinion and the rise of populist parties resulted in *"them trying to use the EU venue to minimize their application numbers through advocating a quota system"* (Zaun, 2018, p. 57). On the contrary, the countries which received a smaller share were supportive of unilateral strategies and declined taking more responsibility. The analysis demonstrated the dominant pro-quota position of Germany, Austria and Sweden and the contra-quota position of the V4 and eleven other member states. The option of 'non-agreement' was a powerful instrument in these negotiations due to the informal consensus in the Council. Nevertheless, no major policy change happened as a crisis response and still only a few member states continue to take the lion's share of refugees. Interestingly, those member states are not

advocating for a responsibility-sharing system strongly; they have become more quiet because the numbers of refugee claims dropped. *"The fact that states only advocate responsibility-sharing when receiving significant shares themselves, highlights that solidarity is called upon in a rather instrumental way in the EU"* (Zaun, 2018, p. 58).

About the level of integration and the failure of policy change

Against the backdrop of 20 years of co-operation on a European level on asylum policies, *"the lack of concerted approach in times of crisis is puzzling and leads us to assess the state of integration in this policy field"* (Niemann & Zaun, 2018, p. 4). Policy change and the level of integration are linked together, because different policies entail more or less integration over time. The ACF analysis illustrated that the internal response to the crisis concerning (long-term) solidarity measures was relatively poor and that the CEAS crisis did not lead to more integration in the subsystem. Complementary to the ACF, other theories of European Integration highlight the connection with crisis and several authors have assessed different perspectives on the roots, processes and consequences of crises (Genschel & Jachtenfuchs, 2018). Classical theories of European integration are not addressed in this thesis but one could compare the results from the ACF to scientific research through the theoretical lens of Liberal Intergovernmentalism or Neofunctionalism. The results of the analysis of the ACF are similar to explanations of Liberal Intergovernmentalism, because it highlighted the importance of intergovernmentalism and showed that less supranationalism is present after the 'crisis' in the subsystem of asylum policy. Both frameworks are actor-centred and emphasise the relevance of the interests of actors within a subsystem. For the sake of completeness, however, many scholars argued that the Advocacy Coalition Framework on EU level and Liberal Intergovernmentalism do not pay enough attention to the influence of supranational institutions, which gained more power over time and that the power of national governments is overestimated. Nevertheless, several analyses, also cited in this thesis (Trauner, 2016; Ripoll Servent and Trauner, 2014), illustrate that in the field of migration policy, member states' preferences prevailed, *"because they had already locked in the hard policy core before giving away power to the EU institutions"* (Huber, 2018, p. 34)*.*

Before 2015, a lack of ambition was formative for the asylum policy field, but this improved because of the CEAS crisis. Member states were affected differently by the new circumstances and they responded to the crisis in the Council based on their national interests (e.g., policy core beliefs, elections, political and societal climate regarding refugees). After the implementation of the first emergency relocation scheme, the Parliament called immediately for more solidarity but as it was only consulted in emergency measures, it had minor impact on the outcome. Regarding the second relocation scheme (agreed on by qualified majority outvoting four member states), some member states were not able to meet their obligations, which brought the relocation scheme

to the CJEU. This process illustrates the influence of intergovernmentalism because the supranational EP had not much political clout in the decision-making process and so the Council and the member states were the powerful actors. Despite a binding CJEU ruling outlining their obligations, many national governments have not acted in accordance with the relocation scheme (Huber, 2018; European Parliament, 2019b; European Parliament, 2019a).

A crisis can expose the failure of the existing integration regime, and as a result member state governments *"revert to intergovernmental conflict about distributing the burdens of the crisis and hard bargaining, in which asymmetries of interdependence and bargaining power determine the integration outcome"* (Schimmelfennig, 2018a, p. 972). In accordance with Moravcsik (1993), crises have crucial distributional implications, because even if governments are able to find a compromise on a common response that benefits all, the burdens of adjustment are mostly not equally distributed. Therefore, intergovernmental bargaining stems from asymmetrical interdependences and unequal international distributions of costs and advantages of integration. States negotiate to reach their national goal of integration from which they gain most advantage. The states which are extremely affected by the consequences of the crisis will benefit most from integration or lose most from disintegration, and they consequently have a weak bargaining position. On the contrary, states which are hardly hit by the crisis and therefore satisfied with the as-is situation have the best chances to assert their favourite policy (Moravcsik, 1993). This theoretical concept is linked to the outcome of the ACF analysis.

Following up on this, Zaun (2017) clarified that the reasons for the failure of an adoption of a permanent relocation scheme were the asymmetrical interdependence and the presence of Suasion Game dynamics (or Rambo game, which is a situation structure, in which *"one actor has a dominant strategy to defect, while the others must cooperate in order to avoid an even worse outcome"* (Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017, p. 19). In addition, Biermann et al., explored a similar argument in their analysis, also referring to the crisis response as a Rambo game situation. Member states which are least affected by migratory pressures were comfortable with or even preferred maintaining the status quo and were, as a consequence, able to leave the more affected member states aggrieved. Biermann et al. (2017) demonstrated that the preferences of EU member states (favour/oppose political reform) mirror the states' positional characteristics in the context of international interdependence. The authors illustrated that the uneven affectedness of migratory pressures had effects on the preferences of cooperation. The preferences can be labelled as asymmetrical, because there was no consensus on a common bad, which was needed to be warded off. The countries which have not been directly affected by the crisis would need to receive more refugees than normally and this costs money and the political capital of right-wing or populist governing parties. Therefore, the least affected states blocked reforms which would have induced major policy change, and the most affected ones

called for policy change. According to Biermann et al. (2017), member states which commanded the most power over the question of policy change were those *"bearing the lowest costs of non-agreement, rather than those states with a relative preponderance of economic resources"* (Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017, p. 5).

As the international interdependence varies across states and issues, it enhances different preferences on political reform (or in the terminology of the ACF: major policy change). States have diverging capacities to react to external shocks based on their positional characteristics like the economic structure, the geographical location, the fiscal capacities and the exposure of financial risks. In accordance with Moravcsik (1998), *"as the costs of international interdependence increase as a result of an exogenous shock, states will prefer more policy coordination, and hence political integration, to the status quo or even disintegration"* (Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017, p. 7). The authors argued that the likelihood for political reform (major policy change) depends on the type of collective action problem encountered by actors and power asymmetries (stemming from asymmetric interdependences), which influence the relative bargaining leverage of member states and thus the distribution of advantages from the cooperation. All these academic conclusions embed the findings of the ACF analysis in a broader academic picture and illustrate that several analyses had similar approaches and findings.

According to Niemann and Zaun (2018), despite the lack of a common internal redistributive European response, the CEAS crisis triggered the externalization of refugee flows. The implementation of Frontex and the strengthening of border protection demonstrate how the responsibility-sharing did not work between the member states, but instead with third countries outside the EU. The integration was possible in this policy field because it was a collective interest of all member states; border management would redistribute asylum seekers to non-EU countries instead of internal EU distribution. Political pressures from many actors "*increased breadth and depth of integration while falling od reaching a genuinely supranational solution*" (Niemann & Zaun, 2018, p. 14). Contrary to the development of the CEAS, the crisis triggered policy change and integration in another subsystem; states were willing to hand over fundamental powers to a shared border agency even if this is a highly sensitive part of national sovereignty. Furthermore, member states also circumvent national constraints, playing the EU against national interest, creating a conflict between EU institutions and member states.

To sum up, the application of the ACF in this thesis and Liberal Intergovernmentalism explain the circumstances and occurrences of the post-crisis phase of the CEAS similarly. Even if an external shock triggered a crisis response and the Commission presented many proposals which would have generated a major policy change, the Council amended them critically or rejected them,

while the Parliament had little impact on the progress. Member states strengthened the dominant policy core and influenced the outcome of the negotiations even more by compliance or non-compliance with the EU legislative framework. There was no major policy change as a response to the crisis and the policy core beliefs maintained resilient. Due to this fact, the CEAS crisis did not obtain substantial deepening (or widening) of integration. Additionally, member states which received a larger share of asylum applications demanded common European solutions suggested by European institutions to solve the issue, while other member states with fewer shares or in need of someone to blame also set their eyes in the direction of EU institutions (Huber, 2018; European Parliament, 2019b; Zaun, 2018). The European institutions were not able to supersede or amend the Dublin Regulation with a sustainable system based on responsibility-sharing or reallocation (Schimmelfennig, 2018a; Biermann, Guérin, Jagdhuber, Rittberger, & Weiss, 2017).

9. Conclusion

"Therein, various mobilizing and politicizing concepts – including humanitarianism, security, diversity, protectionism – were deployed in public discourses to legitimize the ever-new restrictions of migration and asylum policies and diverse expressions of solidarity or lack thereof" (Krzyzanowski, Triandafyllidou, & Wodak, 2018, p. 1)

The following conclusions can be drawn based on the application of the ACF. The ACF analysis illustrated several key aspects. The CEAS crisis triggered minor policy changes, namely changes in secondary aspects in many countries, but it did not trigger major policy change. During the years following the crisis, several other external shocks and events (e.g., terrorist attacks, success of right-wing parties and government changes) had lasting effects on the political development in the member states and therefore on EU level too. Due to the new circumstances, constant changes in policy core beliefs and secondary aspects made it impossible to find a common solution for all member states. Moreover, one could argue that due to the non-adoption of a system based on solidarity, some member states felt left alone, which impinged on shifts in public opinion. So, the political actors adopted more restrictive anti-immigration measures and right-wing parties benefited from this trend. The complexity or multidimensional nature of European multi-level governance plays a crucial role in the context of policy change. It is challenging to examine policy change on a European level because it is significantly affected by the developments on the national level. Moreover, the national positions are not stable either; they are dynamic and change following national general elections and changes in government, which may result in changes in the national position on EU level. The analysis emphasises the relevance and impact of national elections and governments on the progress of EU asylum

policies. Sabatier et. al (1998) showed that the levels are deeply connected and minor changes (secondary aspects) on the European level may cause a change of policy core beliefs on the national level in specific member states and vice versa. Therefore, it is essential to analyse not only the European Commission as the primary full European institution, it is also necessary to cast a glance at the European Council and more specifically at the positions and circumstances of EU member states.

The crisis of the CEAS can be perceived as one of the most multifaceted disputes in recent EU history. It has divided the Union into those who seek a European solution based on solidarity and responsibility-sharing and are in favour of accepting refugees, and those who oppose such proposals and do not want to change the policy core belief of non-solidarity (Apetroe, 2016). The connection between crisis and change in the context of the EU asylum policies can be summed up as insignificant. The status quo of the Dublin System with a stable policy core remained basically unchanged. This demonstrates that there was no major policy change even in times of crisis and even if the majority of actors (Commission, Parliament and several member states) did not agree with the dominant policy core belief of 'non-solidarity, responsibility-shifting and less integration'. *"The attempt of changing the core of the CEAS framework, the Dublin Regulation, with an adoption of a refugee quota system represents a case of unsuccessful policy-making or a non-adoption on EU level"* (Zaun, 2018, p. 45).

Hypothesis	Results
External shocks may lead to a change of the belief system – policy core beliefs and secondary aspects – in the subsystem.	✓
External shocks may lead to a minor policy change in the subsystem	✓
External shocks may lead to a major policy change within the subsystem	✗
It is unlikely that the policy core beliefs of a political programme will be changed as long as the dominant advocacy coalition of the subsystem that created the programme remains in power – unless change is forced upon it by a superior political entity	✓
Due to a lack of common policy core beliefs, no uniform advocacy coalition was formed in the subsystem of the CEAS to achieve major policy change (Relocation instead of Dublin)	✓

Table 11: Hypotheses and results (Own compilation, 2020)

Moreover, after 2015, the number of soft law acts increased and exceeded hard law acts compared to the previous period. According to the ACF analysis, the political divisions between the actors within the subsystem are a reason for this development. Many soft law acts can be characterised as compensation for the lack of hard law within the CEAS framework. Additionally,

even if a crisis happened that could trigger policy change, the creation of soft law acts instead of hard law acts prevailed. The actors participating in the subsystem could not agree on the policy core and therefore it was not possible to adopt hard law by unanimity. On the topic of the content of the policies, there are some major issues regarding allocation, the conditions of asylum seekers and refugees and the discrepancies among the member states in the legal rights granted to refugees. The difficulties of translating the duty of 'burden-sharing' into institutional rules did therefore not just arise due to the fact that member states had already consented in the 1990s to a principle of assigning responsibility for asylum determination on a first-entry principle without any responsibility-sharing mechanisms. The lack of shared norms in asylum procedures and recognition as well as the Schengen principle of external borders because it makes it possible for asylum seekers to move on if first entry countries at the border let them pass through without registration were also complicating and impeding policy change (Bauböck, 2018). The European Agenda on Migration was a starting point for further progress in 2015, addressing not just the emergency but also stating the objective to create an efficient European system. The Commission also tried to target the issue of the implementation gap, which creates the differences between the member states. Nevertheless, the European Commission failed, because the member states maintained a certain degree of autonomy (Cellini, 2017).

Furthermore, Bačić Selanec (2016) argues that most of the EU response measures are mainly ad hoc solutions to the problems and that the EU *"still lacks a coherent and systematic approach to crisis management in a timely manner"* (Bačić Selanec, 2016, p. 74). So, it is not enough to amend the system for assessing which state is in charge of dealing with asylum applications; instead, the asylum system needs to be unified in all member states. The CEAS falls primarily short of unified comprehensive implementation rather than suffering from a lack of an innovative and new harmonized legislation or set of rules. *"CEAS limitations lie not in the number of arrivals, but rather the lack of solidarity between the member states, of appropriate institutional framework to provide asylum in the EU, and of values and fundamental rights approach in guiding implementation of the asylum policy" (Jakulevičienė, 2019, p. 90).* To close the gap, Cellini (2017) argues that a reform focussed on reducing national autonomy and establishing a common programme based on good practices by the best performing countries, would be an option. Additionally, a monitoring system of compliance with EU standards would be necessary.

To put it briefly, the CEAS is beset with inconsistencies and deviations in its implementation among member states. However, the main problem is not that there is not enough legislation but that the member states simply do not respect it. The Commission's proposal illustrated a deeper gridlock of the system, which is the consequence of the lack of compliance with the Union's crucial principles. With regard to secondary movements, a reasonable and fair-minded balance between incentives and restrictions for asylum seekers would be sustainable and future-oriented.

Moreover, the contemporary problems and challenges as well as the future of the CEAS cannot be viewed as disconnected from the subject of solidarity (Jakulevičienė, 2019). Many scholars examined several ideas and solutions for improving the CEAS, for example the report *"From Tampere 20 to Tampere 2.0: Towards a new European consensus on migration"* published by the European Policy Center in 2019, but those will not be outlined in the conclusion of this thesis.

To conclude, to compensate the failure of policy change after the CEAS crisis in 2015, member states would need to act according to the legislative framework, be more compliant and more committed to finding European solutions. There have been many steps towards a common system, but more steps are essential in the near future. The political debate and negotiations about the emergency relocation mechanism and the permanent relocation scheme "*has generated more heat than light*" (Maiani, 2017, p. 116). A fundamental debate about solidarity and responsibility must take place to resolve several issues the Union has to deal with. As stated by Maiani (2017), the question that needs to be answered in the future is what kind and level of solidarity is needed and wanted for the CEAS.

9.1. Challenges and outlook

The political division on the issue of migration and asylum and the lack of solidarity affected several other policy fields and impeded European co-operation. The CEAS crisis 2015 had an impact on Europe, not just on the political level, but also the population in every member state was and still is affected. The political stalemate on asylum and migration was a consequence of the way that finding a European solution took place. Many incidents and unforeseeable events happened in the years after the crisis. This enhanced or changed the positions of national governments and also slightly of the European institutions. In 2019, the European elections took place and a new Commission was sworn in. The CEAS and the living conditions in the refugee camps were and are still heavily criticised by several NGOs and human rights organisations. 2020 was the year of unexpectedness and Covid-19 changed the world and also politics and policy.

According to Rasche (2020), the pandemic also has an impact on the European asylum and migration policy because, firstly the virus outbreak further limited the refugee's ability to apply for asylum in the Union and, secondly, the EU's capacity to establish a 'common' asylum and migration policy has been affected by the uncoordinated member state responses. Referring to the first point, the ability to seek asylum in the Union has been constrained by measures to prevent the spread of the virus. The EU closed its external borders between March and June 2020 for non-essential travel with the exception for *"persons in need of international protection […]"* in accordance with the non-refoulment principle, but the *"travel arrangements for resettling refugees are subject to severe disruption"* (Rasche, 2020, p. 2). Therefore, resettlement activities (e.g., UNHCR) and humanitarian admission programmes have been suspended. As a result, asylum

applications decreased sharply. Furthermore, member states used the virus as a pretext to deny refugees access to their territory, even if the Commission pushed member states to exclude asylum seekers from entry restrictions. Moreover, overcrowded reception centers and the poor living conditions in man refugee camps make it nearly impossible to introduce physical distancing measures. In Ritsona (Greek refugee camp), 2300 refugees were quarantined after 20 people tested positive and similar cases were reported in Germany, Austria and Malta. This also explains the decrease in registered asylum applications (Rasche, 2020). Additionally, Rasche (2020) argues that it is necessary to introduce electronic tools which could be activated during a crisis, like online registration, remote management of applications or video interviews, to guarantee that asylum procedures are not on hold in case of a renewed lockdown.

Furthermore, border controls have been introduced as an immediate reaction to the pandemic, which has weakened the EU's role as crisis manager who could establish a common asylum and migration policy. The situation in 2020 is similar to the national crisis reaction in 2015; in both cases member states tended to favor national responses. As a consequence of the pandemic, *"member states re-imposed border controls with little regard to the formal requirements under the Schengen Border Codex"* (Rasche, 2020, p. 3). The relocation of unaccompanied minors from Greece was also affected by Covid-19. The Commission proposed a scheme in March for 16 000 minors who would have been relocated across the Union. Nevertheless, it has been a very slow relocation process due to quarantine and Covid related health regulations (Dimitriadi, 2020).

As stated by Rasche (2020), the reaction of the EU to the outbreak of Covid-19 illustrates the fragmentation of the EU's asylum and migration policy. The priority for von der Leyen Commission was to mend the fractures between the EU-27 and revitalise the negotiations about a reform of the CEAS. The EU's economic recovery was on top of the agenda and therefore the negotiations on the New Pact on Asylum and Migration have been delayed. "*Whereas Covid-19 clearly illustrates the need for collective action, the virus contributed to a de-prioritisation of the asylum reform*" (Rasche, 2020, p. 3). How and to what extent the pandemic will have a long-term impact on the European Union and its population is uncertain but the *"human rights dimension needs to be at the heart of European policy on migration and asylum, particularly in a post Covid-19 world"* (Dimitriadi, 2020, p. 9)*.* There is once again momentum in this field which will be discussed the following pages.

"It almost doesn't matter who started the fires this week in the squalid refugee camp on Lesbos called Moria, leaving thousands to sleep on the streets. […] Either way, Europe — from Brussels to Berlin, Budapest, Warsaw and Athens — is responsible for this tragedy. This is blowback for one of the European Union's worst failures on an admittedly long list: its inability to fix a broken refugee system" (Kluth, 2020)*.*

A common approach how to deal with asylum within the CEAS in the spirit of solidarity still does not exist. In October 2020, the proposed revision of the Dublin System was dismissed – even though fires destroyed the largest refugee camp in Greece, Moria, on the island of Lesbos, in September 2020. The fire left nearly 1000 people without shelter. Thousands of people had been placed in the camp and were unable to leave until their asylum applications had been processed on the mainland, which was *a "slow bureaucratic process"* (BBC, 2020). The refugee camp was only designed for 2800 people, but in March 2020 nearly 20 000 people lived in the so-called EU hotspot (Breng, 2020). The government of certain European member states blocked and rejected several proposals, while refugees have been waiting in squalid conditions. Human Rights Watch characterised the camp as an open-air prison and stated in April 2020 that the Greek authorities had not done enough to address and solve the problem of 'acute overcrowding', also referring to a possible outbreak of the coronavirus (The National Herald, 2018; BBC, 2020). Jean Ziegler, former vice-chairman of the Advisory Committee of the UN Human Rights Council, described the camp as "*the recreation of a concentration camp on European soil"* after a visit in 2019 (Ziegler, 2020).

Instead of continuing the negotiations on the previous draft, the European Union published a new Pact on Asylum and Migration on 23 September 2020. A European taskforce was introduced to address the emergency situation on Lesbos and *"help ensure that migration is managed in an effective way, including adequate living conditions, more certainty through faster procedures and more balanced responsibility-sharing and solidarity"* (European Commission, 2020c). Additionally, the taskforce was asked to interact closely with EU agencies and international organisations. Ursula von der Leyen stated that Moria "*is a stark reminder of the need to find sustainable solutions on migration"* and that the EU needs to strengthen the EU agencies to help refugees in Greece: *"Together we have to show that Europe manages migration in a humane and effective way. The European Commission is ready to contribute its share".* However, as the analysis of the CEAS policy development has shown, it is not enough if just the Commission that has been ready since the 1990s is willing to contribute its share; the member states must join forces. The EU Commissioner for Home Affairs, Ylva Johansson, concludes succinctly that *"[…] It is not good enough to say never again, we need action and all Member States must play their part"* (European Commission, 2020c). The fire in Lesbos can be perceived as another crisis, which might trigger policy change. The Commission declared that it wants to pursue a comprehensive approach to migration in Greece: building new reception facilities with a European standard, ending overcrowding (mentioning the relocation of unaccompanied children and families with children to other Member states), improving the processes to make them more effective and faster, increasing voluntary returns, and improving the safety and security of migrants and asylum seekers (European Commission, 2020c).

Furthermore, the Commission (2020) announced a fresh start on migration to build confidence and strike a "*new balance between responsibility and solidarity".* The EU acknowledged that the current system does not work anymore; the EU has not been able to solve the issue during the past five years and now must overcome the current stalemate. According to the European Commission, the Pact on Migration and Asylum is a step towards a *"common European solution to a European challenge",* which would lead to a *"reliable migration management system".* Ursula von der Leyen proclaimed: *"We are proposing today a European solution, to rebuild trust between Member States and to restore citizens' confidence in our capacity to manage migration as a Union. The EU has already proven in other areas that it can take extraordinary steps to reconcile diverging perspectives"* (European Commission, 2020a)*.* The proposal targets several issues and aims at improving the procedures to increase trust between member states and strives for changing the policy core to a fair sharing of responsibility and solidarity: "*Member States will be bound to act responsibly and in solidarity with one another. Each Member State, without any exception, must contribute in solidarity in times of stress, to help stabilize the overall system, support Member States under pressure and ensure that the Union fulfils its humanitarian obligations"* (European Commission, 2020a)*.* Moreover, in June 2021 the Parliament and the Council reached an agreement to transform the European Asylum Support Office into a European Union Agency for Asylum, which was a fundamental initiative within the New Pact on Migration and Asylum (European Commission, 2021).

The Commission proposed withdrawing the 2016 draft amendment of the Dublin Regulation because an approach that goes beyond the rules of determining responsibility was now regarded as more adequate. Instead, it was replaced by *"a new, broader instrument for a common framework for asylum and migration management – the Asylum and Migration Management Regulation"* (European Commission, 2020b)*.* The Commission stated the urgency of this reform and called for political consensus on the core principles by the end of 2020. The Commission recommended a common framework for solidarity and responsibility sharing with flexible contributions from the member states; these could range from relocation to taking over responsibility for sending people back to their home country if they are not entitled to asylum or several forms of operational support. Voluntary cooperation and flexible forms of support are the core of the new system. Additionally, more contributions based on a safety net will be mandatory at times of increasing pressure on individual Member States. The new system includes a certain solidarity mechanism in times of crisis, which would lead to "*more fairness"* within the CEAS, but the mechanism will focus on relocation or return sponsorship (European Commission, 2020a). It follows a more restrictive approach than the 2016 proposal – "*Under return sponsorship, Member States would provide all necessary support to the Member State under pressure to swiftly return those who have no right to stay, […]. Member States can focus on nationalities where they see a*

better chance of effecting returns" (European Commission, 2020b, p. 5)*.* This system is based on the contribution of member states to relocate or return refugees and an additional distribution key would be introduced. Compared to the 2016 proposal, member states now have the power to decide if they focus on relocation or return sponsorship.

In comparison to the more restrictive approach, according to Bauböck (2018), several scholars argued that a refugee protection system does not have to primarily contain criteria for refugee distribution based on wealth and size of the member state; it also must introduce a system where states could relocate refugees to their home territory but also support other member states financially for integrating refugees. A resilient assurance of compliance is a key element for such a system (Bauböck, 2018). Moreover, the EU also has a new objective to boost a common EU system for returns, which would contain a more efficient legal framework, a more powerful position of Frontex, and the introduction of an appointed EU Return Coordinator (European Commission, 2020a). Time will tell if the member states will agree on this new, more restrictive approach with a certain change of the policy core.

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11. List of Figures and Tables

12. Annex

12.1. Abstract

"Jean Monnet […], claimed in his Memoirs to have 'always believed that Europe would be built through crises, and that it would be the sum of their solutions'" (Schimmelfennig, 2018a, p. 986).

This master thesis is primary a literature research which merges the findings of several journal articles to provide a detailed overview of the policy development and change of the 'Common European Asylum System' (CEAS) as a result of the 'crisis' in 2015. Therefore, the agenda setting process and policy development take centre stage and so the application of the Advocacy-Coalition Framework to the EU's policy process within the CEAS sets the scene. The actor-related research interest focuses on the involvement and reactions of EU actors in asylum policy making triggered through the 'crisis'. The author of this thesis illustrates the noteworthy historic development of the CEAS, its policy core and different advocacy coalitions over time. The analysis of the legal response to the 'crisis in 2015' with a focus on the Dublin System and the (emergency) relocation schemes is the focal point and it aims to answer what the divers power structures pursue, which coalitions are formed over time based on policy core beliefs and what the outcome of these negotiations was. Additionally, the development of soft and hard law is sketched to lay out a more extensive picture and demonstrate the close link to European integration, which plays also a significant role. The conclusions regarding the policy development and integration will mainly be drawn based on the analysis of the advocacy coalitions and their positions over time, presenting insights of the connection between the national and the European level.

Keywords: Advocacy Coalition Framework, Common European Asylum System (CEAS), policy change, Dublin System, European Union, (emergency) relocation mechanism, CEAS crisis 2015, migration, refugees, crisis response, hard law, soft law, integration;

12.2. Zusammenfassung

"Jean Monnet […], claimed in his Memoirs to have 'always believed that Europe would be built through crises, and that it would be the sum of their solutions'" (Schimmelfennig, 2018a, p. 986).

Diese Masterarbeit ist in erster Linie eine Literaturrecherche, die die Ergebnisse mehrerer Studien, die in wissenschaftlichen Journals publiziert wurden, zusammenfügt, um einen detaillierten Überblick über die Politikentwicklung und den Wandel des „Gemeinsamen Europäischen Asylsystems" (GEAS) als Folge der "Krise" im Jahr 2015 zu geben. Dabei stehen

der Agenda-Setting-Prozess und die Politikentwicklung im Mittelpunkt, sodass die Anwendung des *Advocacy-Coalition Frameworks* auf den Politikprozess der EU den Rahmen der Analyse bildet. Das akteursbezogene Forschungsinteresse bezieht sich vor allem auf die Beteiligung und die (Krisen-)Reaktionen der EU-Akteure in der Asylpolitik. Die Autorin dieser Arbeit veranschaulicht die historische Entwicklung des ‚Gemeinsamen Europäischen Asylsystems', dessen politischen Kern (*policy core*) und die verschiedenen Akteurs-Koalitionen im Zeitverlauf. Die Analyse der rechtlichen Reaktion auf die "Krise" mit einem Fokus auf das Dublin-System und die Quotenverteilung stehen im Mittelpunkt und sollen Antworten auf folgende Fragen liefern: Welche Ziele verfolgen die verschiedenen Machtstrukturen? Welche Koalitionen haben sich im Laufe der Zeit aufgrund politischer Kernüberzeugungen gebildet? Wie gestaltet sich das Ergebnis der Verhandlungen? Zusätzlich wird die Entwicklung von *Soft* und *Hard Law* skizziert, um ein umfassenderes Bild zu vermitteln und die enge Verbindung zur Europäischen Integration aufzuzeigen, die ebenfalls eine wichtige Rolle spielt. Die Schlussfolgerungen bezüglich der Politikentwicklung und der Integration werden basierend auf der Analyse der *Advocacy-Coalitions* und ihren Positionen im Zeitverlauf gezogen, wobei vor allem zentrale Erkenntnisse über die Verbindung zwischen der nationalen und der europäischen Ebene präsentiert werden.

Schlüsselwörter: *Advocacy Coalition Framework*, Gemeinsames Europäisches Asylsystem (GEAS), *Policy Change*, Dublin-System, Europäische Union, Quotenverteilung, „Flüchtlingkrise 2015", Migration, Krisenreaktion, Hard Law, Soft Law, Integration;

12.3. Eidesstaatliche Erklärung

Ich erkläre eidesstattlich, dass ich die Arbeit selbständig angefertigt, keine anderen als die angegebenen Hilfsmittel benutzt und alle aus ungedruckten Quellen, gedruckter Literatur oder aus dem Internet im Wortlaut oder im wesentlichen Inhalt übernommenen Formulierungen und Konzepte gemäß den Richtlinien wissenschaftlicher Arbeiten zitiert, durch Fußnoten gekennzeichnet bzw. mit genauer Quellenangabe kenntlich gemacht habe.