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European Cooperation in Asylum Policy

A study on the 2015 migration crisis

Jan Wynarski Utrecht University – Universität Konstanz

(6936180 - 917886)

1st Supervisor: Prof. mr. dr. Sybe de Vries (Utrecht University)

2nd Supervisor: Prof. Dr. Gerald Schneider (Universität Konstanz)

Abstract: The study investigates cooperation in the asylum policy of the European Union. Based on a liberal intergovernmentalist perspective on decision-making, data is collected that measures the preference of Member States, the European Commission and the European parliament. Whereas the theory of liberal intergovernmentalism was designed to predict events when European integration happens, the findings contribute to the literature attempting to explain the absence of European integration in the aftermath of the "migration crisis". The study finds that theoretical expectations contributing restrictive policies to Member States and liberal policies to the supranational institutions are oversimplistic. In fact, the evidence suggests the opposite depending on the issue at stake.

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1. Introduction

In early March 2020, the topic of migration has been back at the top of the European Union's agenda before the COVID-19 pandemic dominated public life and the European Union worked on how to accordingly respond. The president of the European Commission Ursula von der Leyen travelled to the Greek border with Turkey after Turkish president Recep Tayyip Erdogan announced that migrants would no longer be prevented to enter the European Union (Politico, 2020).

In March 2016, the EU and Turkey reached an agreement and published the EU-Turkey statement to reduce the number of migrants arriving in the European Union. In 2016, Turkey was hosting more than 2.5 million refugees from Syria and that figure rose to over 3.5 million in 2019.[1] The announcement of the Turkish president sparked concerns over a new influx which is regarded as a threat given that refugee camps on Greek islands were already operating beyond their capacity such as the Camp Moria in Lesvos, where around 20,000 refugees are accommodated although it is only designed for 3,000. Overall, recent developments such as the statement made by von der Leyen calling Greece "Europe's shield" pose the question whether the protection of the external border may go as far as restricting the human rights of persons on the move (Euronews, 2020)

The preceding Juncker Commission faced resistance from Member States in its efforts to reform the Common European Asylum System (CEAS) between 2015 and 2019 and an agreement could not be reached before his term has ended. The modernization of the CEAS is also on the agenda of the new Commission as Ursula von der Leyen included it in her political guidelines as European Commission president (Von der

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[1] https://data2.unhcr.org/en/situations/syria/location/113

Leyen, 2019). As of July 2020, a new reform proposal has not yet been proposed. The Article 13(1) of the Dublin Regulation (EU) No 604/2013 that is currently in force designates the Member State where the third-country national entered the European Union (EU) for the first time to be responsible for examining the application for international protection. This provision makes the Dublin Regulation the cornerstone of the EU's asylum system and leads to a significantly stronger "burden" for Member States with external borders. In the 2015 migration crisis, Greece and Italy had to deal with the majority of new arrivals to EU territory. The reforms proposed by Juncker and the announcement of von der Leyen aim at reducing that "burden" by sharing asylum seekers among the Member States. Furthermore, Member States have stressed the importance of the protection of the Union's external border to limit access to the EU territory for those that seek protection. The EU ultimately needs to decide to what extent it welcomes people on the move that seek asylum or other kinds of protection and whether it feels comfortable putting the protection of state borders above the protection of human lives.

In the literature on European asylum policy, there are two hypotheses that aim to explain the decisions the EU takes in this policy area. The "venue shopping" thesis that argues governments shift asylum policy to the European level to avoid national constraints (Guiraudon, 2000).This, in consequence, leads to restrictive policies. The "liberal constraints" thesis derives from that view and posits that restrictive Member States are constrained by EU institutions that push for a liberalisation of asylum policy (Kaunert & Léonard, 2012) .

Contributing to this debate, the following thesis aims to analyse when decisions have a restrictive impact on people in need of protection and when do coalitions prevail, that liberalise EU asylum policy answering the following research question:

When do European countries choose to cooperate in asylum policy and what are the consequences for asylum seekers?

The current state of the literature on European asylum policy and the "migration crisis" is outlined in chapter 2. The gap in the literature lies in the analysis of politically controversial proposals systematically and the exploration of possible liberalization after 2015. In Chapter 3 the theoretical framework is presented which lays down theories explaining asylum policy outcomes with a focus on the intergovernmental perspective, which sees Member States as the most important actor explaining European cooperation in core state powers such as migration (Genschel & Jachtenfuchs, 2018). The study investigates the political conflicts and the resulting outcomes in the area of asylum and external migration to the EU in the period between 2015-2019. The study design analyses the consequences of the "migration crisis" to EU policy and The follows a similar approach to Wasserfallen et al. (2019) who collected preference data from member states and European institutions on the different reforms in the Economic and Monetary Union in the wake of the euro crisis. Crises are often seen as an opportunity for change, which is why they attract particular interest in research. The literal translation of the word "crisis" from ancient Greek can be translated to decision or choice. The reform of the Common European Asylum System has been blocked in the Council and the failure of reform has been analysed by researchers (Biermann et al., 2019; Börzel & Risse, 2018). Other aspects of the "migration crisis" such as the EU-Turkey statement has been analysed. In short, this thesis analyses preference formation and interstate bargaining outcomes during the migration crisis. Explaining the nature of successful EU reforms, and why policy-makers did not manage to reach more far-reaching solutions, is a task of significant academic and policy importance (Wasserfallen et al., 2019).

2. Literature review

2.1. The Common European Asylum System

In 1999, the European Council met in Tampere, Finland where it has decided to work towards creating a common European asylum regime in accordance with international obligations such as the 1951 Geneva Convention. Between 1999 and 2005, which has been called the first phase of the CEAS a large number of asylum legislation has been introduced with the aim to harmonise national policies. The introduction of minimum standards has improved asylum procedures in some countries which led Kaunert and Léonard (2012) to conclude that the first phase can be considered a success.

The CEAS includes four main legal instruments on asylum which have been recast in the early 2010s. The Qualification Directive 2011/95/EU specifies the criteria for the qualification of non-EU nationals for refugee or subsidiary protection. The Asylum Procedures Directive 2013/32/EU attempted to guarantee that throughout the EU all member states engage in procedures with common standards for granting and withdrawing international protection, including for instance access to legal aid. The Reception Conditions Directive 2013/33/EU lays down standards for the reception of applicants for international protection in areas such as housing, employment and education. The Dublin Regulation (EU) No 604/2013 establishes the criteria and mechanisms for determining Member States responsibilities for examining an application for international protection lodged by a third-country national or stateless person in the EU.

In November 2004, EU heads of state and government adopted The Hague programme (Council, 2005) which introduces the idea of a common European asylum

system (CEAS), highlighting the challenge to establish common procedures and uniform status for those granted asylum or subsidiary protection. The European Commission's policy plan on asylum (European Commission, 2008), presented in June 2008 sets out three pillars to substantiate the development of the CEAS. The aim is to increase harmonisation to standards of protection by further aligning the EU Member States' asylum legislation, to ensure effective and well-supported practical cooperation and to increase solidarity and a sense of responsibility among EU Member States, and between the EU and non-member countries. These objectives allow asylum policy to be assessed and its implementation to be held accountable. It is important to note that this is a document from a supranational institution and not one which the governments of the EU have officially endorsed in the Council or European Council. Still, the policy plan sets out the direction in which the CEAS should develop. In the field of European asylum policy an increase in harmonization and cooperation in a number of policy areas has been observed but this is still well away from a totally integrated asylum system (Hatton, 2015).

The main reason supporting that claim is the absence of a burden-sharing mechanism that physically transfer protection-seekers from one Member State to another. Scholars have attributed such a scheme on the basis of a capacity distribution key as the most obvious method to address inequal refugee burdens. One of the first explicit references to such burden-sharing ambitions date back to statements made by EU ministers in 1992 in response to the refugee crisis in the Balkans. These debates led to a German Presidency Draft Council Resolution on Burden-Sharing in July 1994. This proposal envisaged the legally binding sharing of refugees according to a distribution key based on three criteria: population size, size of Member State territory, and GDP. The German

draft foresaw the introduction of a compulsory relocation mechanism. However, this proposal did not find the necessary support in the Council.

2.2. European Cooperation in asylum policy

The Common European Asylum System provides for cooperation among destination countries of persons in need of protection. Scholars have dealt with the question of whether increasing cooperation between destination countries in the EU can bring about benefits (Czaika, 2009; Hatton, 2015). In simpler terms: Why should the EU cooperate instead of leaving asylum policy to the member states? Typically migration movements impact relations between different destination countries because unilateral policy responses by one country tend to cause external effects for other countries (Czaika, 2009). The different scholars find that possible gains to cooperation include reducing costs and uncertainty, minimizing the diversion of asylum applicants from one destination to another, safeguarding international security, and the adherence to international provisions such as the 1951 Refugee Convention. Most articles refer to some type of public good argument, but it is not always clear how this translates into policy in practice (Hatton, 2015).

The public good argument regards asylum policy in the Union as a collective action problem. Although all states or EU citizens might prefer the public good of high standards of refugee protection, individually they will try to evade responsibility and free ride on others' contributions to global refugee protection. Moreover, member states that grant more favourable reception and better access to potential refugees will run the risk of attracting a disproportionate number of asylum seekers, since access to one Member State allows travel to others (Toshkov & de Haan, 2013). Burdens are expected to be shared unevenly among states, with large countries predicted to

account for a disproportionately high share of the contribution effort relative to smaller states. As larger states have potentially more to lose from the non-provision of the public good and additionally can single-handedly make a significant difference in its provision, they free-riding incentive will be lower compared to smaller states (Thielemann, 2018).

Refugees are granted admission based on the benefit to them as opposed to the benefit to the host society. This can be regarded as a fundamental difference to immigration policy. The benefit to the host population is derived from the humanitarian idea to protect others from persecution. Such benefits are non-rival and non-excludable which provides the rationale for the idea that refugee protection can be thought of as a public good. Thus, the people of one country benefit from the knowledge that refugees can find security in another country (Hatton, 2015).

In the international arena cooperation in asylum policy, which is often referred to as "burden-sharing" requires a coalition of the willing that is unlikely to come about because of the incentives for states to free-ride on others' contributions to global refugee protection. The EU as a regional union of states with relatively powerful institutions of supranational government has been identified by scholars as being in a nearly optimal position to establish an effective regime of burden-sharing involving all its Member States (Bauböck, 2018; Czaika, 2009).

The existing literature has offered three main reasons for the highly unequal distribution of burdens among EU Member States (Hatton, 2005, 2015; Neumayer, 2004). First, the literature points to the role of structural pull-factors such as existing migrant networks, geographic location, historic or language ties, which have been identified to strongly influence asylum seekers' choice of destination country. Second, policy-

related pull-factors play a role. Countries with more open immigration policy regimes are expected to attract more migrants. This is related to the idea that states can be expected to pass stricter policies to offset structural attractiveness, a dynamic that has at least partly been reduced by policy harmonization on the EU level. And third, there is the effect of other EU policy measures such as the Dublin Regulation, which allocates responsibilities for the processing of asylum seekers to the Member States in which the asylum seeker first entered the EU.

There are three broad types of initiative which can be distinguished to address unequal distributions of burdens: (1) harmonizing laws (sharing policy); (2) resource sharing (sharing money), and (3) physical burden- sharing (sharing people). Furthermore, it is important, if one is concerned about free-riding dynamics, to differentiate initiatives that are voluntary or discretionary and those that are binding and automatic (Thielemann, 2018).

With regards to the first sharing category, one can assume that policies that aim at changing the incentives of potential asylum seekers when making destination choice decisions can be expected to influence the distribution of burdens among states. Traditionally, national policymakers have competed by adopting deterrence policies. States adopted more restrictive refugee policies than their neighbours to shift burdens onto other states. Common rules or minimum standards can facilitate to address burden-inequalities that stem from policy differentials. Policy-harmonization is expected to be effective in addressing burden-inequalities only if there is a credible commitment to implementing common rules that are legally binding and to the extent that such inequalities are actually the result of policy-related and not structural pull-factors. The Commission's trust in the equalizing effect of policy harmonization was always going to be at least partly misplaced. If structural pull-factors are indeed crucial

for the scale of a country's asylum and refugee burdens, then policy harmonization might actually make it more difficult to reach a more equitable allocation of asylum seekers across the member states, as states can no longer counterbalance particular pull-factors with their own specific policy approach. Therefore, policy harmonization might effectively weaken rather than promote efforts aiming at more equitable responsibility-sharing (Thielemann, 2018).

Second, in relation to the sharing of resources, financial or otherwise (personnel, hardware, and so on), it is useful to distinguish between voluntary and discretionary instruments and those that constitute binding legal obligations on states and are automatic and non-discretionary. Former less effective than latter. Case-by-case negotiation slow and uncertain. Political costs cannot be addressed by financial burden-sharing (Thielemann, 2018).

The third category of burden-sharing initiatives (people-sharing) deal with the physical relocation of asylum seekers and refugees from one state to another. This type of burden-sharing addresses some of the limitations that other instruments suffer from. If the principal concern of refugee burden-sharing is with the disproportionate allocation of protection seekers in a given state, relocation initiatives can address such concerns. Voluntary distribution schemes, while less controversial, can be expected to be less effective than binding and automatic ones, such as those that are automatically triggered once a certain threshold of inequality or disproportionate burden is reached (Thielemann, 2018)

Responding to increased European influence on asylum policy the convergence idea suggests that the individual member state adopt more similar, although not necessarily stricter, policies responding to Europeanization resulting from harmonization.

Convergence can avoid the problem of free riding if the policy is set up at a different level than the lowest one. If all Member States have committed to the same level of protection and access conditions, some of the incentives to one-sidedly harden a national policy fade away, while the basic attraction to free-ride is still there. It is important to investigate the question of whether or not the institutionalization of an EU-wide asylum regime leads to convergence in policy outcomes (Toshkov & de Haan, 2013).

Neumayer (2005) observes a lack of convergence in his study which covers the period 1980–1999. This lack of convergence applies to the rates of recognition of full status and the more inclusive category, which considers people who are allowed to stay for mostly humanitarian reasons. Vink and Meijerink (2003) find a slightly decreasing tendency in the spread of the number of applications for the period 1982–2001. However, they use the standard deviation to measure the dispersion instead of the methodologically better suited coefficient of variation employed by Neumayer (2004) which includes the average in the calculation of dispersion (Toshkov & de Haan, 2013). Toshkov & de Haan (2013) find strong evidence for convergence for the period of 1999-2010 which suggests that harmonization policies in the CEAS has led to more similar policy outcomes. EU states are slowly getting closer together in terms of recognition rates which can be regarded as an indicator to measure asylum policy output, and convergence is not happening at the lowest recognition level, contradicting a race to the bottom (Toshkov & de Haan, 2013).

An issue with regards to achieving more cooperation in asylum policy is whether countries show the political will to agree on asylum policies that maximize joint welfare. As Czaika (2009) observes, common policies that achieve the social optimum collectively could put one of the countries worse in a worse position than it would have

been in the without cooperation. In that case, the country would prefer the status quo to such an accord. He shows that the more heterogeneous countries are the more probable it is that the participation constraint will not be fulfilled for both countries. However, he also argues that heterogeneity in the EU is not that large that it would preclude cooperation. It is important to note that he based this statement without being able to assess the consequences of enlargement.

The literature identifies anti-immigration attitudes and support for extreme right-wing parties being strongly linked with policy outcomes and supports the notion that, across Europe, rises in far-right votes are linked with stricter asylum policies (Neumayer, 2005). These observations lead scholars to argue that liberal minded-elites leading mainstream political parties might be inclined to delegate control over asylum to the EU in order to cool down domestic politics and loosen pressure from the far right (Hatton, 2015).

2.3. "Migration Crisis"

Crises are often used by political actors as windows of opportunity to change policies. However, not all crises lead to change. If political actors are not able to frame problems as "common bads" and stress the urgency and necessity of reform, the opportunity is wasted. The EP managed to provide a joint vision of the crisis, which it based on previous legislative failures and the need to find common European solutions, and built strong internal support that provided legitimacy beyond ideological cleavages, this was not enough to successfully change European legislation. The "shadow of hierarchy" casted over agenda setting and day-to-day policy making by the EU governments was so strong that it influenced the entire legislative reform of the CEAS. This hierarchy was to be found among institutional actors such as the primacy of the European

Council) but also inside the policy package with subordinating all agreements to the success or failure of reforming the Dublin regulation (Ripoll Servent, 2019).

The analysis has also found that the assumption that the EP is more integrationist than member states needs to be qualified. Although there continued to be an "integration bias" among most mainstream EP groups, the traditionally positive connotation given to "more integration" has been questioned. There was a rising concern that harmonisation might come at the expense of substance and that pushing integration might not always be desirable. They find that integration can be pushed for reasons other than wanting more Europe with Eurosceptic groups like the ECR willing to support harmonisation if it meant reinforcing the borders and securitising asylum polices. Therefore, this case highlights the boundaries of European integration and how the content and purpose of more "Europe" is becoming increasingly challenged and porne to disintegration (Ripoll Servent, 2019).

EU agreements during a crisis have a limited involvement of supranational EU institutions and revert to more intergovernmental governance.

Overall, the EU's response to the crisis therefore strengthens our claim that the delegation to supranational, non-majoritarian, institutions strengthens minority rights in Europe. It also suggests that the greatest long-term impact of the EU in strengthening refugee protection should be expected to stem from the continuation of an incremental regulatory approach embedded in strong non-majoritarian governance dynamics and is unlikely to result from highly politicized intergovernmental bargains. While delegation strengthens minority rights and shields them from the preferences of latently anti-immigrant majorities, it is not unproblematic, as it may also further voters' estrangement from both national and European politics. It may also reinforce the

perception that political elites are detached from the worries and demands of their voters. This in turn has recently been shown to strengthen right-wing populism and Euroscepticism across Europe (Thielemann & Zaun, 2018).

Thielemann (2018) applies the theory of public goods to the crisis arguing that large-scale migratory movement across borders, refugee protection efforts produce non-excludable and indivisible benefits, increasing stability and security. Large states are can unilaterally make a significant contribution to the provision of public goods, such as internal security, by accepting large numbers of asylum seekers. In doing so, they can facilitate reducing the scale of unregulated movement and stabilize a highly volatile situation. Smaller states in turn have an incentive to free ride on the protection efforts of larger states. The public goods literature, as cited above, suggest that in order to reduce free-riding, burden-sharing initiatives require effective international cooperation. Thielemann (2018) highlights how free-riding and burden-shifting with regard to asylum seekers can undermine the provision of public goods, such as EU internal security, it helps to explain why some countries have voluntarily accepted higher responsibilities during the recent crisis. He shows that the insufficiency of symbolic and non-binding cooperation efforts of the past, points to ways in which refugee burden-sharing initiatives could be made more effective in the future.

3. Theoretical framework

The analysis is rounded in a rational-institutionalist theoretical framework following the liberal intergovernmentalist "baseline model" of European integration (Moravcsik, 2018), processes of national preference formation and interstate bargaining to resulting policy outcomes are systematically covered and linked. This entails a systematic application of the analytical key concepts preferences, salience and

contested policy issues, which are related to political decision-making (Wasserfallen et al., 2019). Before delving into intergovernmentalist explanations of European integration, the theories on EU asylum policies are reviewed.

3.1. Theories and findings on the impact of the EU on asylum policies

The "venue shopping" thesis, introduced by Guiraudon (2000), is based on an intergovernmental view arguing that governments shifted policymaking to the European level because it allowed them to circumvent national constraints on migration control such as courts, opposition from other ministries, parliamentarians or migrant aid groups. This led to high decision-making powers for the Member States and limited influence of EU institutions. Guiraudon (2000), thus, argues that EU asylum policy restricts rights for asylum seekers because this is aligned with Member States preferences.

In concert with Guiraudon (2000) one hypothesis regarding the impact of the EU on national asylum policies supposes that the process of Europeanization will lead to a race to the bottom responding to an increase in their own applications and those of other countries. Accordingly, the Member States contest to discourage asylum seekers to enter by tightening admission standards and lowering recognition rates (Toshkov & de Haan, 2013).

Toshkov & de Haan (2013) find limited evidence that the asylum policy outcomes in the EU member states has been caught in a downward spiral between 1999 and 2010. Until the mid-2000s there was a decreasing trend in recognition rates and admissions, but all indicators that have been looked at are back to their levels from the late 1990s in the last few years of the first decade of the 21st century. The findings are consistent

across different indicators, and when looking at aggregate and origin-specific asylum data.

Thielemann & Zaun (2018) have found conflicting evidence to the restrictive venue-shopping theory. They find that transferring asylum policies to the EU level does not decrease the number of checks and balances policymakers are faced with, particularly with the move towards the ordinary legislative procedure which has increased the power of the European Parliament. The EU-level policymaking provides mechanisms that tend to favour minority rights, even when Member States in the Council have more restrictive preferences. By applying a principal-agent perspective they find that the Commission, the Court of Justice of the European Union and the EP have frequently favoured policy outcomes that are less restrictive compared to the Council. Delegation to supranational institutions strengthens non-majoritarian governance, understood as separation from anti-immigrant attitudes in the wider national electorates which allows national governments to depoliticize unpopular migration policies.

Following observations that the balance of power has changed with the Amsterdam Treaty in 1999 and the Lisbon Treaty in 2009, scholars have argued that the supranational institutions act as a liberal constraint, hampering the restrictive attitude of Member States (Bonjour et al., 2018). This claim is highly debated in the literature. Kaunert and Léonard (2012) have stated that the European Commission, the European Parliament, and the Court of Justice are more "refugee-friendly" than Interior ministers of Member States. However, the claim that supranational EU institutions altogether have liberal policy preferences has been contested. Lahav and Luedtke (2013) observe that the Commission wants to show itself to be allied with member states in tougher border control and immigration enforcement. Scipioni (2015) has stressed that the position of the Commission varies according to policy fields. While

the Commission may take a liberal stance on asylum issues, it tends to support the restrictive preferences of Member States in the areas of irregular migration or border and visa policies. NGOs, and civil society organisations illustrated that the Commission shares many of the assumptions and preferences of member states regarding the wide use of technologies and control devices in the areas of border control, alongside a general tendency towards restriction of and the need to "fight" against irregular migration (Scipioni, 2015),

The "liberal constraint" thesis similarly to Guiraudon (2000) assumes that all member states always have restrictive preferences which has been characterized as an "over-simplification". Kaunert and Léonard (2012), for instance, make the theoretical point that preference formation should be regarded as endogenous of institutionalized cooperation and that preferences may evolve. However, they do not give any examples of Member States not pursuing restrictive policies. Thielemann (2018) does so when he discusses the fact that Germany opened its borders to Syrian refugees in 2015 and suspended transfers to the Member State of first entry under the Dublin Regulation.

Liberalizations during the first phase of the Common European Asylum System (CEAS) can be explained by the dominance of "strong regulators" (states with a long regulatory tradition in the field and a well-functioning administration) trying to impose their standards on "weak regulators" (Zaun, 2017). However, this argument is unable to explain standards exceeding the lowest common denominator of the strong regulators. Kaunert and Léonard (2012) have argued that the EU's technocratic and legalistic approach can account for EU asylum policy liberalization. However, the claim that supranational EU institutions altogether have liberal policy preferences has been contested. Lahav and Luedtke () observe that the Commission wants to show itself to be allied with member states in tougher border control and immigration enforcement.

Scipioni (2015) has stressed that the position of the Commission varies according to policy fields. While the Commission may take a liberal stance on asylum issues, it tends to support the restrictive preferences of Member States in the areas of visa and border policies.

Comparing the second generation of asylum policies after the introduction of co-legislation to the first generation (Ripoll Servent & Trauner, 2014) find that asylum policy has become slightly more harmonized and less restrictive. The study therefore finds evidence that confirms the claim that that the reinforcement of the EU's supranational institutions made the EU asylum policy venue more liberal (Kaunert and Léonard 2012). Additionally, the analysis underlines that the EP and the Commission changed their positions to a larger extent than the Council, which offers a different perspective on the magnitude and character of these changes. However, they emphasize that this does not warrant the conclusion that European asylum governance has become more liberal, because recent legislative reforms have left the restrictive core of existing asylum laws untouched.

Thielemann & Zaun (2018) argue that large parts of the electorate in the EU favour a decrease in immigration, which puts policy-makers facing a dilemma as the logic of majoritarian politics calling for further restrictions often stands in contrast to the basic human rights obligations of liberal states, particularly those concerning the protection of refugees. Historically, non-majoritarian institutions, such as national courts, have provided a counterweight to populist pressures for restricting minority rights and played an important role in preserving basic human rights of migrants. It has been argued that EU policymaking has strengthened the role of the executive, reduced accountability and limited judicial oversight in European policymaking. Some have even viewed the EU level as a strategic venue chosen by those who want to adopt more restrictive

policies across Europe (Guiraudon, 2000). Recent developments such as the 2016 EU–Turkey Statement on the return of forced migrants to Turkey have again highlighted such concerns (Thielemann & Zaun, 2018)

It argues that by delegating agenda-setting, decision-making and implementation in the area of asylum to EU institutions national governments strengthen non-majoritarian policy dynamics, less subjected to electoral pressures, that shield European policy-makers from some of the populist pressures that national governments face. We therefore expect more non-majoritarian policy dynamics to promote more liberal. Hence, the more Europeanized asylum policies are, the more likely they will be to safeguard or strengthen minority rights. The concepts of non-majoritarian and majoritarian institutions are best understood as two ends of a spectrum rather than two clearly distinguishable alternatives. The European Commission and the Court of Justice of the European Union (CJEU) are certainly the least subject to electoral pressures among the EU institutions (Zaun & Thielemann, 2018)

3.2. Intergovermentalist perspectives

Models that are concerned with explaining intergovernmental bargaining and European Integration are linked to Moravcsik's theory of liberal intergovernmentalism (LI). He explains European integration "as a series of rational choices made by national leaders' in response to international interdependence" (Moravcsik, 1998: 18). Moravcsik (1998) lays out a tripartite framework that explains how integration translates international interdependence into collective institutions: national preference formation, intergovernmental bargaining and the creation of institutions to safeguard substantive agreements. The economic interests of powerful domestic groups shape the preferences of a country in an international interdependent situation, the

agreements echo the configuration of national preferences and bargaining power, and the design of the institutions is a result of the cooperation problems they are ought to resolve (Schimmelfennig, 2015).The implication of LI is that important EU decisions are results of lowest-common-denominator negotiations between the governments of the biggest three member states: France, Germany, and Britain (Moravcsik, 1991). Two of these member states (typically France and Germany) can press the third (typically Britain) to participate in integration efforts they support by threatening to exclude the third party (Webber, 1999).

Scholars that applied LI to the "migration crisis" argue that European integration shall be expected when the national heads of state and government with great bargaining power correspond on further integration. They claim that conditions to further integrate were in place during the "migration crisis" and that LI does not give a sufficient answer why reforms such as a relocation mechanism did not come through (Börzel & Risse, 2018; Wolf & Ossewaarde, 2018). Biermann et al. (2019) disagree with the expectation that LI predicts European integration and argued that the different level of affection between Member States did not lead to a common willingness to reform.

The intergovernmentalist perspective on asylum policies assumes that member state governments are in control of policy-development in the field of migration and asylum and that they have restrictive policy preferences (Bonjour et al., 2018). Two expectations can be derived from these assumptions. *First, the process of integration is explained by Member States restrictive aspirations. Second, since Member States dominate decision-making processes, the result of European integration will be restrictive asylum and migration policies.*

LI does not make such predictions, as it is a theoretical framework developed to explain European integration across policy areas. However, it assumes that negotiation outcomes take the form of the lowest common denominator. The lowest common denominator must not be the most restrictive policy as the result of negotiations on asylum and migration policies between 1999 and 2005 show (Zaun, 2017). "Strong regulators" in Northern and Western Europe, which are states with a long regulatory tradition in the field and a well-functioning administration imposed their standards on "weak regulators" in Southern Europe leading to standards held at the lowest common denominator of the "strong regulators".

Bargaining power, which is a crucial concept of LI is dependent on a government's reversion point. The reversion point is the valuation of the outcome in the absence of an agreement. Sovereign states will only agree to a bargained outcome if it is beneficial to the outcome that would prevail if the negotiations reached no conclusion, the reversion point determines how much governments are willing to compromise to avoid the reversion point. The better off a government is in the absence of an agreement relative to a bargained outcome and the less it cares about the bargain, the more easily it can walk away from the negotiations, and this gives it bargaining power. By the same token, governments that would be left much worse off without a conclusion to the negotiations are in a weaker bargaining position, all else equal. A related factor is the time horizon of the government: the more quickly it needs action, the weaker its position. The member state that can wait longer is likely to be in a superior negotiating position, especially if its counterpart member states face dire circumstances in the relatively short run. In many international negotiations, the reversion point is the status quo, the condition prevailing at the start of the interaction. This is particularly true when states bargain about establishing new or deeper forms of cooperation or integration. In

these cases, a failure to reach a consensus means that the status quo of no or existing levels of cooperation will continue. In this kind of negotiation, the states that have most to gain from more international cooperation will, all else equal, have less bargaining power because they are more eager to conclude a deal, especially if the issue under negotiation is equally salient for all negotiating parties. One crucial and common assumption for analysing these negotiations is that states will oppose any reform proposal that deviates more from their ideal position compared to the status quo (Frieden & Walter, 2019).

The EU has become increasingly involved in core state powers such as migration but also areas of defence and foreign policy, citizenship or monetary and fiscal affairs. Genschel & Jachtenfuchs (2016) argue that this has changed the dynamics in which the EU operates. Whereas organized business interests where important for market integration. State élites drive integration as they are most immediately affected and concerned of the changes. This has implications on how integration looks like. Whereas business interests preferred strong supranational rules and capacities, state élites prefer intergovernmental arrangements with limited centralization because they secure a role for national officials in managing the new capacities.

This draws on earlier work describing "new intergovernmentalism". (Bickerton et al., 2015) find that integration takes place in the absence of supranationalism, with new institutions created that have concentrated the powers and activities of national governments and national representatives. Policymaking has developed informally and derives from many of the legislative frameworks that historically characterized supranational law-making beyond the nation-state.

Bickerton et al.. (2015) derive several hypotheses that can be tested against. *First, deliberation and consensus-building are ends in themselves rather than a means to further supranationalist integration. Second, supranational institutions, do not necessarily resist the change towards decentralized modes of decision and policy-making, but have often been complicit in it.*

4. Research Design and Methodology

The methodology used is based on the approach by Wasserfallen et al. (2019) who systematically studied EU decision-making in the Economic and Monetary Union during the euro crisis. The data collection included several steps, which will be outlined in the following section. Due to the special situation during which this thesis was written with difficulties to conduct interviews in person, the data collection process in contrast to Wasserfallen et al. (2019) was merely based on document search. It did not make use of interviews to validate Member State preferences and issue salience was not measured either. Especially, the fact that no interviews have been carried out can raise doubts on the validity of the data points.

The rationale of focusing on one individual policy areas is to assess different theories of preference formation. Past research on preference formation had the issue of being too narrow on individual policies or having a too-broad account that makes it difficult to explain preferences. Shifting attention to the meso-level of one policy area, with an enlarged number of cases, can shed light on preference theories (Lehner & Wasserfallen, 2019; Lundgren, et al., 2019).

In line with approaches to measure EU decision-making, the most important concepts are defined to be able to retrace the data selection strategy.

Contested issue :The contested issues are defined as policy questions over which the EU member states and EU institutions held different policy preferences and that were (a) voiced during EU debates on refuge and asylum from 2015 to 2019, are (b) unidimensional in the policy space, and are (c) empirically traceable for at least 20 per cent of member states.

Policy position: The policy position is a statement of a policy preference of the member state government on the given contested issue at a point when the policy debate has started, but before the final EU compromise was reached.

Policy space: The unidimensional policy space is delineated for each contested issue by the most extreme positions voiced by member states or EU institutions. The most extreme position that implies less integration is coded as 0 (and most integration as 100). If there are empirically distinguishable policy positions between 0 and 100, the policy space contains additional pre-defined positions in between 0 and 100.

Policy score: The policy score is the coding of the policy position within the ordered policy space (i.e., 0 or 100 or any pre-defined score in between). The coding is set to the nearest pre-defined point in the policy space.

In contrast to Wasserfallen et al. (2019) salience is not covered. It has been found to be impractical measuring it via the document search

4.1. Data collection

This section provides information to the description of the data collection and measurement strategy in the article. In order to ensure a validity, reliability and objectivity of the dataset, the strategy includes a number of control steps. In detail, it comprises:

1. The identification of the key migration reform proposals discussed during the 2015 to 2019 period.

2. The identification and selection of the most contested policy issues within each policy proposal.

3. The coding of the preferences of all 28 EU member states, 2 EU institutions and the final outcome on each contested policy issue.

4. A credibility rating is given to the different sources

4.2. Step 1: The Identification of the Key Refugee and Asylum Reform Proposals

First, I aimed to identify and select the most important asylum and migration reform proposals officially negotiated during the refugee crisis. I looked for reform proposals that directly responded to the EU's institutional deficiencies unveiled by the crisis, i) Since their inception, EU policies on migration and asylum were not complete with regards to emergency measures: No solidarity mechanisms were established to deal with unequal pressures encountered by several states in the context of the internal borderless area in the Treaty of Maastricht (Scipioni, 2017), ii) other proposals dealing with asylum and border policy. The initial list of reform proposals was selected on the following criteria that were inspired by the Decision-making in the European Union

(DEU) selection strategy and the EMU position dataset ((Thomson et al., 2012; Wasserfallen et al., 2019): (i) proposals concern EU regulations or directives, EU primary law changes, Council decisions or intergovernmental treaties, (ii) proposals should explicitly concern areas of immigration and asylum policy, (iii) they should be negotiated between 2015 to 2019, (iv) proposals should be politically important, which was operationalized by them being mentioned in the European Council conclusions. Compared to Wasserfallen et al. (2019), (i) has been expanded to include the EU-Turkey Statement, because it has been mentioned in the European Council conclusions and was important in the EU's crisis management. It is important to note EU-Turkey Statement takes the legal form of a political statement. This was preferred to an international agreement because it did not require extensive consultations and national ratification and could not be legally challenged (Smeets & Beach, 2020).

Following extensive analysis of i) quality news media articles issued, for instance, by Euractiv, The Financial Times, Reuters, BBC and national high-quality newspapers, e.g. Le Monde and Süddeutsche Zeitung, as well as ii) European Council conclusions, and iii) EurLex documentation. Initial assistance to front-line member states (measured by emergency relocation mechanism decisions) was included to capture preferences at the beginning of the crisis, while the Dublin IV reform was included to cover preferences with regards to future reforms that have not been agreed upon by the end of 2019. The final list includes the following: Emergency relocation from Greece and Italy, the EU-Turkey Statement, European Border and Coast Guard (EBCG) and Dublin IV reform (see Table 1 in the article).

The DEU selection strategy (Thomson et al. 2012) which excluded Council Decisions because most of the Decisions included in the initial selection of the DEU II database proved to be uncontroversial. The document search showed that the emergency

relocation was contested. Therefore, this Council Decision has been deliberately included in the data set.

The full list of new legislature consists of Regulation 2019/1896 and 2016/1624 on the European Border and Coast Guard, Regulation 2019/1240 on immigration liaison officers, Regulation 2016/399 on Schengen borders code, 2018/1860 on Schengen information system, Regulation 2019/817 and 2019/818 on interoperability framework, Regulation 2017/2225 and 2017/2226 on Entry/Exit system. The majority of these new legislations are technical and uncontroversial, which has been indicated by entering the respective search terms of the specific names into the Euractiv search engine and that no results have been displayed that indicate negotiation positions or controversiality about these pieces of legislation. Additionally, none of these proposals have been explicitly mentioned in European Council conclusions, which has been used to operationalise political importance. The discussions around the reform of the CEAS has been dominated by the discussion around the Dublin regulation. The reform of the Asylum Procedure Directive has been mentioned in European Council conclusions whereas the other parts of the package have not been brought up.

The 4 proposals were subjected to different decision-making rules, Table 1 below lists decision rules used for different parts of these proposals. First, the decisions on legislative reforms like the Dublin regulation or the EBCG were adopted according to the EU's ordinary legislative procedure (Art. 294 TFEU), involving the Commission, the Council, and the European Parliament. Second, emergency Third, the EU-Turkey Statement and the EU-Turkey joint action plan were included even though formal EU decision-making rules were not followed. In practice this means that particularly the European Parliament was not involved in the decision-making process and negotiations have been primarily between the European Council and the Turkish

government. The legal nature is disputed among EU law scholars (citations). Due to its importance in resolving the refugee crisis it is included in the list of key reforms despite being outside the decision-making procedures established by the EU treaties.

4.3. Step 2: The Identification and Selection of the Contested Policy Issues

Second, I aim to identify and select the most contested policy issues within these four proposals.

To this end, a corpus of 104 Euractiv articles has been analysed. Euractiv is an online quality newspaper that provides broad coverage of

Table 1: Proposals and Decision Rules

Proposal	Decision Rules
1. Emergency relocation	Council adoption (Article 78 (3)) of TFEU
2. EU-Turkey statement	European Council statement
3. European Border and Coast Guard (2019)	Ordinary legislative procedure
4. Dublin IV reform	Ordinary legislative procedure

EU affairs since 1999 and is, therefore, often used as a primary source in the EU literature and has been used by Wasserfallen et al. (2019) to create the "EMU positions" dataset. Euractiv reporting generates consistent, in-depth text written in a standardised style, which makes descriptions comparable across reform packages and time. Euractiv is an open-access source, which helps replicability compared to alternatives. Moreover, the Euractiv reporting generally pays more attention to policy preferences of smaller member states, which is important for the collection of comprehensive dataset.

The Euractiv articles relevant for each of the four most important proposal were selected by a standardised keyword search. The respective search terms were inductively developed for specific reform proposals. I identified information on all contested issues within all the proposals in the respective Euractiv text corpora and assigned common labels to them using the Zotero software. The frequency of articles containing the same labels enabled me to rank contested issues within each proposal from the most to the least contested. The resulting lists of contested issues were compared iteratively. Euractiv has covered EU affairs since 1999. According to its webpage, the news server currently involves about 40 editors and journalists in 12 European capitals plus subcontractors and partners' staff. Its main editorial office is based in Brussels. Both the decentralised structure and the Brussels head office with direct connections to the EU institutions should limit the risk of a "national bias" in Euractiv's news coverage.

Table 2: Identifying Contested Issues - Euractiv Search Terms

Proposal	Search string
1. Emergency relocation	"Relocation"
2. EU-Turkey joint action plan/ Statement	"EU-Turkey deal" or "EU-Turkey plan"
3. European Border and Coast Guard	"European Border and Coast Guard"
4. Dublin IV reform	"Dublin reform"

The initial round of coding generated a total list of about 18 issues. In the subsequent search for policy positions, seven issues were dropped because of the ability to get policy scores only for a few member states. The final count of contested issues in the

dataset is 11 (see Table 3). This is significantly lower than the 49 issues that Wasserfallen et al. (2019) have found. This is mainly because the euro crisis has led to more different reform proposals than the "migration crisis".

Table 3: Asylum reform proposals and contested issues			
Proposal		Contested issues	
1	Emergency relocation	1 R1	Accept people in need for international protection from Greece and Italy
		2 R2	Mandatory quota system
		3 R3	Number of refugees to be relocated (first phase)
		4 R4	Number of refugees to be relocated (second phase)
2	EU-Turkey Statement	5 EUT1	General acceptance of the deal
		6 EUT2	Direct humanitarian admission on a voluntary basis
		7 EUT3	Plan B to stop refugees at the Greek border
3	European Border and Coast Guard	8 EBCG1	Intervention without consent
		9 EBCG2	Borders as a national sovereignty
4	Dublin IV reform	10 D1	Mandatory quota system
		11 D2	Reform of Dublin regulation necessary

Our approach to the identification and selection of contested issues based on the frequency of reporting is based on findings of the communication science literature. This literature confirmed the link between political contestation and intensity of media reports (Jungherr, 2014). The most important functions of the media is their

gatekeeping role, as journalist select out of the complex political reality a limited number of aspects that reach the public (Shoemaker and Vos, 2009). This selection is not random, because media are especially prone to cover items that "allow the personalization of politics, the illustration, staging, and dramatization of political contest […] ,and negativity (Jungherr, 2014). Consequently, the primary focus of journalists covering EU-level negotiations should be on conflicts between member states and/or other stakeholders concerning contested policy issues.

4.4. Step 3: The Measurement and Coding of Policy Positions

Third, the preferences of all 28 EU member states and two EU institutions for all 11 issues were coded. Based on the DEU strategy (Thomson et al. 2012), the most extreme preferences held by member states or EU institutions were coded as 0 and 100, respectively. Afterwards, all in-between positions held by other member states or EU institutions were coded. This coding was based on the intensive analysis of the existing Euractiv text corpora, complemented with observations from other quality news media articles, official EU and national documents, and academic publications.

When adopting this procedure, the literature on communication science was followed. Based on findings by Jungherr (2014), it is assumed that journalists particularly cover extreme positions in their reports of political negotiations, which are most suitable to illustrate and dramatize ongoing events. We collected member states' positions after the specific proposals were proposed but before the final EU-level consensus was reached.

4.5. Step 4: Credibility rating

The credibility of the sources used in the document analyses is captured by a credibility rating. A three-score rating was adopted, where A and B ratings stand for excellent to reliable document sources that form the majority of the dataset, with the rest rated as acceptable (C) sources.

A: Excellent source (official documents from national or EU institutions) and a clear statement of the policy position. If the position is not stated clearly (the statement requires some interpretation), then it is B rated.

B: Reliable source (quality media, such as Financial Times, Bloomberg, Reuters, The Economist, Euractiv, national high-quality newspapers (FAZ, Le Monde etc.), or published scholarly articles) and clear statement of the policy position. If the position is not stated clearly (the statement requires some interpretation), then it is C rated.

C: Acceptable source (statements from less established media sources) and clear statement of the policy position. If the position is not stated clearly (the statement requires some interpretation), then it is rated as not acceptable (not included in the dataset)

5. Results

5.1. Race to the bottom and convergence

Before analysing the outcomes of EU negotiations on asylum policy, asylum policy outcomes are assessed in order to address theoretical expectations such as the race to the bottom hypothesis and convergence.

Toshkov & de Haan (2013) remark that there is no single set of numbers that can verify or dismiss a race to the bottom with regards to asylum policy outcomes in Europe. Investigated are outcomes of the policy process, with the focus on from all on positive decisions and recognition rates. They do not consider other important aspects like the quality of the border facilities, the length and fairness of the decision process, etc (Toshkov & de Haan, 2013). Nonetheless, theoretical arguments outlined in the section above strongly suggest that we should observe a spiral of continually decreasing recognition rates and less people allowed to enter the member states of the EU.

Table 4: Outcomes of asylum policy

Year	CV	Total decisions	Positive decisions	Recognition rate
2010	0.70	222,410	55,575	0.25
2011	0.74	237,390	59,535	0.25
2012	1.03	288,505	91,010	0.32
2013	0.74	314,235	107,610	0.34
2014	0.67	366,850	167,385	0.46
2015	0.66	596,655	307,650	0.52
2016	0.96	1,106,395	672,890	0.61
2017	0.67	961,610	437,555	0.46
2018	0.67	581,895	217,430	0.37
2019	0.66	569,285	221,030	0.39

Source: Eurostat (2020), own calculations

Note: CV = Coefficient of Variation

Table 4 shows the aggregated recognition rate of the EU before and after the "migration crisis" of 2015/16. The recognition rate is calculated as the share of positive

decisions on all decisions for people protected on convention status and for humanitarian reasons. The data shows that recognition rates have risen between 2010 and 2016 with a rising number of applications. Although, the relevance of aggregated data is limited because it is not broken down by country of origin and host country, it can still show trends of the development of EU-wide asylum outcomes. The observed figures contradict the race to the bottom hypothesis. Even though the recognition rate decreases after 2016 it is still at a higher level than at the beginning of the observation in 2010 with significantly higher numbers of positive decisions.

The Coefficient of Variation displays the dispersion of recognition rates within the Member States of the European Union. It is measured by the standard deviation divided by the arithmetic mean. A decreasing CV over time indicates convergence, whereas an increasing CV signals divergence. Neumayer (2005) argues that aggregate recognition rates would be misleading. Therefore, he analyses origin-specific recognition rates. Toshkov (2014) notes that many observations are measured at zero or close to zero. The numbers show very weak convergence from 0.70 decreasing to 0.66 comparing 2010 to 2019. Most interestingly, the aggregate recognition rate jumped to around 1 in 2012 and 2016. In both cases, the figures jump back to the levels of the previous year. Consistent with findings of Toshkov & de Haan (2013), there is no evidence of divergence of recognition rates in the EU. The trend of convergence is very modest and given that aggregate data is used it should be interpreted very cautiously.

5.2. Analysing the Migration Crisis policies

Table 5 provides an overview over the dataset created to capture preferences of Member States and EU institutions.

Table 5: Summary of the dataset

	Contested issues	Positions in the policy space	Coded positions		Average positions		Outcome
			MS	EU institutions	MS	EU institutions	
1	R1	5	18	2	61	100	100
2	R2	4	19	2	42	80	100
3	R3	3	15	2	27	100	100
4	R4	4	28	2	74	100	100
5	EUT1	4	28	1	69	80	100
6	EUT2	4	28	1	34	100	100
7	EUT3	2	9	1	56	100	0
8	EBCG1	2	10	2	70	100	50
9	EBCG2	2	17	2	82	100	100
10	D1	4	26	2	46	100	0
11	D2	2	19	2	47	100	0

MS: Member States; EU: European Union

In the following the policy proposals and issues are analysed one by one and tested for the expectations drawn from the literature. The contested issues R1 until R4 concern the Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601

on the emergency relocation of persons in need of international protection from Greece and Italy.

R1 has coded the initial willingness of Member States to cooperate with Greece and Italy and accept people in need for international protection. The Member States have been coded 0 if they were not willing to accept any asylum seekers or refugee and 100 if their pledges met the Commission goal. 3 Positions in between have been identified. Some Member States, such as Czechia, Poland and Slovakia said that they would accept Christians only (20). Other Member States were only willing to participate in the resettlement scheme distributing refugees and not in the relocation (40). Lastly, other Member States made pledges but did not meet the Commission goal. The outcome of passing the legislation shows that Member States with a strong bargaining power such as Germany, Italy and France prevailed.

R2 dealt with the issue of introducing a mandatory quota. Member States against were coded with 0 and those in favour 80. France was positioned in between taking on the position that refugees that arrived retroactively were considered. Germany and the European Commission took on the most extreme position that Member States that were not willing to cooperate would be suspended of EU funds. Member States opposing a mandatory quota were outvoted in the Council.

R3 and R4 coded the proposed figures proposed by the Commission and which positions Member States, the EP and the Commission took on. R3 codes the Member States between those not willing to take in any persons and the position of the EP, the Commission, Greece and Germany that 40,000 is not enough. Others took on the position that 40,000 is adequate (60) or did not agree with their share to reach 40,000 (20). R4 coded the decision to additionally relocate 160,000 asylum-seekers. Those

Member States that opposed the measure were coded 0 and those that reached 160,000 or pledged even more were coded 100. Some Member States pledged below the figure of 160,000 (80).

The emergency relocation scheme can be sufficiently explained by LI. Large Member States with high bargaining power were able to resist the opposition, mainly from Central and Eastern Europe and achieved a qualified majority vote to pass the Council Decisions. Poland, resisting the idea of a permanent relocation scheme and preferring no mandatory quota, voted in favour of the Council decision. The decision had a liberalizing effect as asylum seekers were not necessarily restricted to stay in Greece or Italy anymore. With the intention to relocate 200,000 persons between 2015 and 2017, there was at least a higher probability of them seeking asylum in another EU country. Czaika (2009) expected that with the introduction of quality majority voting, the EU would be able to agree on a permanent relocation mechanism. The empirical result shows that quality majority voting has led to agreement at least on the temporary ad-hoc measure. This stands in contrast with the theoretical expectation of new intergovernmentalism, that expects solutions on a consensus-basis. Consensus seemed to not have been possible, indicated by the votes against the decision but did not block decision-making.

EUT1 through EUT3 coded Member State and EU institutions preferences related to the EU-Turkey Statement that was an important decision in the EU's crisis management.

EUT1 codes the general acceptance of the deal by the several actors. Italy, Latvia and Cyprus have been coded 0 because they made clear during the preparation that they might block the deal. Countries and EU institutions that favoured the deal were coded

100 and the in-between position are Member State that openly criticised the deal putting in doubt that it is in accordance with human rights. The countries voicing opposition or concerns have been brought on the side of the proponents of the deal with Germany and the Netherlands at the forefront having agreed on the details before bringing it to the other Member States (Slominski & Trauner, 2018; Smeets & Beach, 2020).

EUT2 codes the Member States and EU institutions position on the proposal for a voluntary humanitarian admission directly from Turkey. Member States that decided not to participate were coded as 0. The proposal has been discussed with the Turkish prime minister at the time, called Davutoğlu. Member States that were willing to participate were coded as 100. Others that voiced the willingness to discuss the proposal in a meeting without pledging to participate (60) were coded in between as well as Member States that took part in more than one discussion but did not pledge to participate. This proposal shows the limited effectiveness and dangers of free riding of voluntary agreements. Even those Member States that were open to discuss the proposal did not pledge in public to participate. Even though the voluntary humanitarian admission was negotiated into the Statement it was never used in practice.

EUT3 codes the proposal of a plan B to stop refugees at the Greek border with Macedonia and Bulgaria. This turned out to be a dichotomous issue with preferences in favour at 100 and opposed to the proposal at 0. There was no plan B put in place, which contradicts the expectation that Member States would always favour the most restrictive approach to asylum policy.

The EU-Turkey Statement can be explained by new intergovernmentalist dynamics. The crisis management of the Member States and the Commission looked for solutions

outside of the legal framework, the CEAS (Slominski & Trauner, 2018). The involvement of the Commission from the early stages (Smeets & Beach, 2020) confirms findings of Scipioni (2015) that the Commission "fights" irregular migration and is aligned with Member States in this area instead of taking on more liberal views than the Council. It thus finds empirical evidence that the Commission facilitates intergovernmental solutions outside of the supranational legal framework.

EBCG1 and EBCG2 coded preferences related to the reform of FRONTEX (*frontières extérieures*) into the European Border and Coast Guard which increased resources for border protection.

EBCG1 coded the Member States and EU institutions along the issue of possible intervention of the EBCG without the consent of the concerned country. All actors have been coded as either favouring the "right to intervene" (100) or opposing it (0). The outcome was the only compromise solution of the dataset which gives the EBCG a conditional right to intervene with a binding decision of the Management board and a Council adoption. EBCG2 coded the preferences of emphasising the protection of borders as a national sovereignty (0= against it being a common task in pushing for the reforms of the EBCG (100). LI is well placed to explain the fact that the EU came to an agreement on this policy proposal furthering integration. Member states with large bargaining power favoured the legislation and pushed it through. Interesting to note is that the EP's and the Commission's preference were in line with the restricting view of Member States regarding asylum seekers rights being at odds with the "liberal constraint" thesis.

D1 coded Member States and EU institutions along their preference regarding the introduction of a mandatory quota system. Refusal was coded on one extreme (0), and

the support of such a system on the other (100). In between positions have been coded because some Member States had scrutiny reservations (80) or general reservations (20) without completely refusing the quota.

D2 coded if the Member State or the EU institution held a reform of the Dublin regulation as necessary because they think that Dublin III is obsolete. Actors in favour were coded with 100 and those against 0. The outcome for both issues has been 0 as the Council could not reach an agreement. The reform of the Dublin regulation faced strong opposition from Central and Eastern Europe, especially the Visegrad countries Poland, Czechia, Hungary and Slovakia. In order to explain the failure of the reform one could argue that France, a country with high bargaining power due to its size and population was opposed to the reform. However, as (Biermann et al., 2019) note France has been among the affected states of the "migration crisis" having an interest to share the burden with countries that are free riding on others. A more convincing account of LI is to consider the reversion point of non-affected states. They are better of with the status quo as they had very low numbers of accepted asylum claims in 2015 as shown by (Biermann et al., 2019). Accordingly, non-affected states with less than 30 accepted asylum claims per 100,000 citizens had a strong bargaining power as they would be worse of under the agreement compared to the status quo. The reform of the Dublin regulation has failed because the current legislative framework could not be framed as a "common bad" in contrast to the euro crisis (Biermann et al., 2019).

The lower political importance of the other parts of the CEAS reforms is a finding in itself. It suggests that when discussions are away from the public they become less controversial and it is easier to strike a compromise as suggested by the "shadow of hierarchy" (Ripoll Servent, 2019). The agreement on the other pieces of legislation hinges on the conditionality that the CEAS is only adopted as a package. The EP and the Council reached an agreement on the reception conditions which allows asylum-

seekers to work 6 months after requesting asylum instead of 9 months. The agreement also provides for accessing language courses from day one and that minors cannot be send to prison, while detention of children will only be possible for family unity and protection purposes. This indicates that the EU does liberalise asylum policy. However, it happens out of the public eye. This suggests that the non-majoritarian nature of EU politics under less electoral pressure is, indeed, beneficial to minority rights. When it comes to large scale changes, which are closely accompanied by the public intergovernmental dynamics dominate.

6. Conclusion

The aim of this thesis was to investigate European cooperation in asylum policy and what consequences this cooperation has for asylum seekers. The goal was to find out when and why asylum policies are liberal or restrictive. By drawing on different theoretical angles, newly collected data on asylum reform proposals was analysed. Whereas Member States cooperated in ad-hoc solutions to protect the borders and even agree on a mandatory relocation scheme, they failed to tackle deficiencies in the current legislative framework, most notably a permanent relocation mechanism. The analysis finds that common theories on asylum policies suffer from oversimplifications. Neither, empirical evidence suggests that the Commission always behaves as a liberal constraint on member states nor Member States always prefer more restrictive policies.

A race to the bottom could also not be identified. The development of the aggregated EU recognition rate is rising when comparing 2010 and 2019 while more total decisions have been undertaken.

It would have been desirable if the data selection strategy led to a higher number of policy proposals and contested issues. This is an indication to the fact how the

discussion around the nature of the permanent relocation mechanism has dominated policy debates. In conflict with some studies suggesting that LI expects European integration on asylum policy, it is argued that reversion points and the preference of the status quo can explain the absence of reform based on a liberal intergovernmentalist perspective. Additionally, the new intergovernmentalist theory touches upon aspects that cannot be explained by LI. The EU-Turkey statement and the involvement of the Commission in setting up arrangements outside of the supranational legal framework (Smeets & Beach, 2020), were supported by the findings of this study. Regarding the future of the CEAS, the findings imply that intergovernmental agreements will only be reached when countries are willing to give up their benefits of free riding and find a common vision in creating a truly common policy.

The dominance of policies that are concerned with reducing the number of asylum seekers in Europe which has been successful to some extent, suggests that the EU has restricted access to its territory and thus the rights for people seeking protection.

The public good literature gives insights that central institutions and mandatory quotas are needed for an effective relocation mechanism, which as mentioned above has been tried since the early 1990s. Currently, it is hard to identify signs that this will change soon. It might be particularly hard convincing member states such as Hungary of the public good of burden-sharing which has the view that "migration is not good, but bad, and bears with it a risk, and accordingly must be stopped." (Hungarian Ministry of Foreign Affairs and Trade, 2019).

The collection of the data has shown that Economic and Monetary Union reforms were better suited to find a large amount of contested issues. This finding is somewhat surprising as both crises have been on top of the agenda of the European Union. On the other hand, in economic and monetary policies, there are more policy instruments

at hand. "Burden-sharing" in asylum policy can be achieved by physical or financial burden-sharing as well as policy harmonization. The solutions to reform the policy area are well known. However, finding the political will seems to be the largest challenge It would be interesting to see further analysis of the dataset, ideally with additional interviews to validate the data and potentially increase the number of proposals and contested issues.

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