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**The Allocation of Asylum Responsibilities in the EU: a Law &
Economics Analysis**

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List of Abbreviations

Agenda	EU Agenda on Migration
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ESS	European Social Survey
GAMM	Global Approach to Migration and Mobility
New Pact	EU New Pact on Migration and Asylum
SAR	Search and Rescue

Chapter 1:

Introduction

1. Introduction

In the aftermath of the Syrian civil war, an increasing number of non-EU nationals (or **third country nationals**, from now on: **TCNs**) tried to access the EU in an irregular manner.¹ Although these journeys have always been dangerous to the individuals undertaking them, the fact that more people engaged in them increased the number of people that died in the Mediterranean Sea. To address this humanitarian crisis, the European Commission presented the EU Agenda on Migration in May 2015.² In this document, the European Commission stated that one of the main goals of EU migration policy is to be a safe haven for people in need of refugee protection.³ In September / October 2015 an increasing number of EU member states started to close their internal borders with other member states because the majority of these irregular migrants started to engage in uncontrolled secondary movements⁴ throughout the EU. Their motive to close their internal borders should be seen as an attempt to prevent these irregular migrants from accessing their territories. Since these closures clearly harmed the objective of a borderless Schengen Area within the EU and internal borders have remained closed for long periods (at the time of writing (August 2021) six EU member states have continued to install internal border controls⁵), the motive for the Agenda did not only focus on the human misery in the Mediterranean anymore but also on solving this Schengen Crisis.⁶ The European Commission adopted for instance a program Back to Schengen – A Roadmap.⁷ Since I follow the view in the literature that structural weaknesses in the EU asylum regime present an important explanation

¹ The European Commission defines irregular migration as: “Movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries” (https://ec.europa.eu/home-affairs/content/irregular-migration-0_en (accessed on 26/07/2021))

² European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, A European Agenda on Migration, COM (2015) 240 final, 13.05.2015.

³ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, A European Agenda on Migration, COM (2015) 240 final, 13.05.2015., see p. 2.

⁴ A secondary movement is a movement by a TCN from one member state to another in a situation that the TCN does not have the right to do so (Maiani, 2017, p.626)

⁵ Austria (internal borders with Hungary and Slovenia), Denmark (all internal borders), France (all internal borders), Germany (internal borders with Austria), Norway (ferry connections to Denmark, Germany and Sweden) and Sweden (all internal borders). See: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en (accessed on 05/08/2021).

⁶ Among others Börzel and Risse (2018) have labelled this prolonged period of closed internal borders as the Schengen Crisis.

⁷ The European Commission adopted for instance a program Back to Schengen – A Roadmap. See European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, Com (2016) 120 final, 04.03.2016.

for the occurrence of these harmful events (see in this context for instance Den Heijer et al. (2016), Thym (2016), Trauner (2016) and Costello and Mouzourakis (2017)), I refer to these events as the 2015/2016 EU Asylum Crisis.⁸ In this dissertation, I will investigate in depth how the Dublin system, the EU's asylum allocation system that allocates asylum responsibilities based on the member state of first entry criterion, creates incentives for asylum seekers and member states to behave in a certain way and how this relates to the goal of the EU to prevent future EU asylum crises. Ultimately I will use this to make normative recommendations.

2. The 2015/2016 EU Asylum Crisis: a policy crisis

As mentioned there are several scholars that view the events during the 2015/2016 EU Asylum Crisis as a consequence of a set of structural weaknesses in the design of the EU asylum regime.⁹

2.1. The EU asylum regime

The EU's asylum regime needs to take into account member states' obligations under the 1951 UN Refugee Convention (including its 1967 Protocol) and the European Convention of Human Rights (from now on: ECHR). The reason is that all EU member states are signatories of these treaties. For this reason, I will first outline the main features of these two treaties after which I will turn to the main features of the EU asylum regime.

2.1.1. The international asylum regime and the European Convention of Human Rights

The cornerstone of the international asylum regime is the 1951 UN Refugee Convention (Hathaway, 2005, p.75).¹⁰ The goal of the international asylum regime is to ensure that all human beings should enjoy their basic human rights.¹¹ If they cannot find this in their state of origin, they should find it in another state in the world (Bauböck, 2018, p.143). In order to ensure this the 1951 UN Refugee Convention provides a definition of who qualifies as a refugee and what this protection should entail.¹² Importantly, the 1951 UN Refugee Convention provides a rather restrictive definition of who qualifies as a refugee. It covers people who are outside of the country of their nationality and face a risk "of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".¹³ For the context of this dissertation the most important group that is not included

⁸ In fact, statistics on the state of origin of the migrants that entered the EU in 2015 in an irregular manner indicate that they are mostly people who are fleeing a conflict (Fargues, 2015, p.3).

⁹ In chapter 2 of this dissertation I will provide a more description of this literature.

¹⁰ UN Convention and Protocol relating to the Status of Refugees, adopted on 28 July 1951 (from now on 1951 UN Refugee Convention).

¹¹ 1951 UN Refugee Convention, preamble.

¹² Article 1 of the 1951 UN Refugee Convention provides a definition of who qualifies as a refugee. The rights of refugees are provided in articles 3 to 34 of the Convention.

¹³ Article 1 sub A.2. of the 1951 UN Refugee Convention.

in this definition are victims fleeing war (Battjes et al. 2016, p.20). The 1951 UN Refugee Convention defines only to a limited extent where refugees should receive their protection (Battjes et al., 2016, p.25). In this context, it just provides **the duty of non-refoulement** to participating states. It means that participating states are not allowed to expel persons, who fall under their jurisdiction, to another state in which *“his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”*.¹⁴

Where the 1951 UN Refugee Convention does not provide protection for people fleeing war, the ECHR does. The European Court of Human Rights (from now on: ECtHR) found in 1989 in the case *Soering vs. United Kingdom* that article 3 ECHR prohibits the expulsion of an individual to a country in which he faces the risk to be ill-treated. This definition also covers people fleeing war (Battjes et al, 2016, p.21-22). With respect to the location of protection the ECHR follows a similar procedure as the 1951 UN Refugee Convention by forbidding the expulsion of individuals to countries where their human rights are likely to be violated (Cherubini, 2015, p.103). Due to this similarity I use in this dissertation a broad definition of the non-refoulement principle. The definition covers the prohibition of returning people to a state in which these people face the risk to be persecuted or their basic human rights being violated. In sum, it means that EU member states cannot return asylum applicants towards states as long as it has not been established that these states can be regarded as safe.

2.1.2. The EU asylum regime

The external approach based on prohibition

Due to the fact that the 1951 UN Refugee Convention and the ECHR only provide obligations for states after a person falls under their jurisdiction, this system has invited states to adopt policies that aim at avoiding asylum seekers falling under their jurisdiction. Practically all developed states in the world have engaged in these so-called **non-entrée policies** (Hathaway, 1992; Gammeltoft-Hansen and Hathaway, 2015; FitzGerald, 2019; Ghezelbash, 2020).¹⁵ The EU and its member states also actively engage in these policies. For this reason, Den Heijer et al. (2016, p.618) state that the external component of the EU asylum policy is based on the **prohibition approach** because asylum seekers are not allowed to arrive in the EU.

¹⁴ Article 33 of the 1951 UN Refugee Convention.

¹⁵ The term “developed states” refers to the selection of wealthier states in the world. Usually this involves countries like the United States, Australia and the EU (note that the EU is a collection of states). Another way to describe these countries is by referring to the global north as the developed states and the global south as the non-developed states (see <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100239540> (accessed on 22/07/2021)).

The internal approach based on coercion

The **Common European Asylum System** (from now on: CEAS) arranges asylum affairs after an asylum seeker has launched an asylum application in one of the EU member states. Importantly, the CEAS ensures compliance with the 1951 UN Refugee Convention and the ECHR. The Treaty on the Functioning of the EU (from now on: TFEU) mentions in this context explicitly the importance of compliance with the non-refoulement principle.¹⁶ The CEAS provides a definition of who qualifies for protection status that covers both people that need protection according to the 1951 UN Refugee Convention and the ECHR (in the Qualification Directive¹⁷). For this purpose, it distinguishes between people qualifying for refugee status¹⁸ and people qualifying for subsidiary protection status¹⁹.²⁰ The CEAS also defines what protection entails (in the Reception Conditions²¹ and Qualification Directives) and it allocates every asylum seeker, who has launched an asylum application in the EU, to a member state that is responsible for hosting him in a way that corresponds with the minimum EU asylum standard (in the Dublin III Regulation²² and the Procedures Directive²³). This system is also referred to as the **Dublin system**.

The Dublin system (as outlined in the Dublin III Regulation) allocates the EU's asylum duties to member states based on a set of criteria. Since it does this without taking into account asylum seekers' preferences, Den Heijer et al. (2016, p.610) argue that the internal component of EU asylum policy is based on the **coercion approach**. Asylum seekers simply have to accept in which member state they are hosted based on the Dublin criteria. In practice the dominant criterion is the member state of first entry criterion (Maiani, 2016a, p.112).²⁴ The Dublin system has a supporting **transfer system** in order to avoid asylum seekers and refugees ignoring their allocation based on the Dublin criteria.

2.2. The prohibition approach and the development of humanitarian crises

As a result of that practically all developed states in the world engage in non-entrée policies, most asylum seekers are forced to stay in their region of origin (Thielemann, 2018, p.65). In other words, developed states play only a marginal role in supplying international protection to people in need of

¹⁶ Article 78 TFEU.

¹⁷ DIRECTIVE 2011/95/EU (Qualifications Directive).

¹⁸ Article 2 sub d of DIRECTIVE 2011/95/EU (Qualifications Directive).

¹⁹ Article 2 sub f of DIRECTIVE 2011/95/EU (Qualifications Directive).

²⁰ Asylum seekers are people that seek either refugee or subsidiary protection status. As I will explain in more detail in section 5 of this chapter, I use in this dissertation a broad definition of the term refugee in the sense that it covers both people who have been granted refugee status and people who have been granted subsidiary protection status.

²¹ DIRECTIVE 2013/33/EU (Reception Conditions Directive).

²² DIRECTIVE 2013/32/EU (Asylum Procedures Directive).

²³ REGULATION 604/2013 (Dublin III Regulation).

²⁴ The Dublin system allocates asylum responsibilities based on an hierarchical list of criteria, which I will explain more detail in chapter 2.

this protection. As a result of that the surrounding states of a state that on a large scale produces new asylum seekers usually do not have the resources to provide meaningful protection to large numbers of people, this practice of non-entrée policies can lead to two types of humanitarian crises.

The first type of humanitarian crises develops if asylum seekers either do not have the means or are effectively deterred from engaging in a risky journey to access the asylum procedure of a state that respects the international asylum standard.²⁵ These people will therefore remain in their region of origin and accept that they will not be hosted in a way that meets human dignity. The second type of humanitarian crises develops if asylum seekers have the means to undertake the dangerous journey and decide to do this in order to apply for asylum in a state that treats them in a way that meets the international asylum standard. Since these journeys are risky, they will likely find themselves in dangerous situations and in some cases they will not even survive the journey. The humanitarian crisis in the Mediterranean Sea during the 2015/2016 EU Asylum Crisis is an example of the second type.

2.3. The coercion approach and the Schengen Crisis

Several scholars have pointed out that the Dublin system creates fundamental problems because it facilitates uncontrolled secondary movements by asylum seekers throughout the EU. This is for two reasons. Firstly, the EU allocates asylum seekers to member states without taking into account asylum seekers' preferences on where they want to be hosted. Since asylum seekers do have preferences, they clearly have an incentive to be disobedient to the structure of the Dublin system if, in this way, they can influence the choice of member state in which they will be hosted.

Secondly, the Dublin system concentrates the EU's asylum duties in a limited number of member states, which are positioned at popular entry points at the EU's external border. In order to shift part of their asylum duties to other member states, these member states engage in so-called wave-through policies (see for instance Den Heijer et al. (2016, p.608-615), Thym (2016, p.1551), Costello and Mouzourakis (2017, p.283-287) and Maiani, 2017, p.626-627). These policies aim at encouraging asylum seekers to engage in secondary movements to other member states. The main pursued policies have aimed at sabotaging the Dublin transfer system so that asylum seekers, who engage in secondary movements, cannot be transferred back.²⁶ It explains why uncontrolled movements of asylum seekers have always taken place in the borderless Schengen Area (see for instance Hailbronner

²⁵ i.e. I define a state that meets the minimum international asylum standard as a state that does not violate a person's rights as established the 1951 UN Refugee Convention or the European Convention of Human Rights.

²⁶ The Dublin transfer system relies on asylum seekers being registered upon arrival and that member states maintain the minimum asylum standard on their territory. By failing to do this member states at the EU's external border can thus prevent other member states from transferring asylum seekers, who according to the Dublin criteria should be their responsibility but engaged in secondary movements, back to them. I refer to this practice as sabotaging the Dublin transfer system.

and Thierry (1997, p.988), Maiani and Vevstad (2009, p.2-3) and Thym (2016, p.1550)). The experience from the 2015/2016 EU Asylum Crisis shows that this only becomes a significant problem for the Schengen Area when large numbers of asylum seekers do this and concentrate in a small number of member states. During the 2015/2016 EU Asylum Crisis a large number of asylum seekers engaged in secondary movement to a limited number Northern member states (Trauner, 2016, p.321).

2.4. The post-crisis EU asylum regime: the reinforcement of the Dublin system

2.4.1. The survival of the Dublin system

After the 2015/2016 EU Asylum Crisis the European Commission wanted to avoid future asylum crises. For this purpose it launched in May 2015 the EU Agenda on Migration (from now on the Agenda). The main motive behind this Agenda is to reform EU migration policy in such a way that the EU and its member states are better able to manage migration flows in order to meet their international and ethical obligations.²⁷ As Den Heijer et al. (2016, p.641-642) notice, the Agenda does not constitute a fundamental change in the way how the EU aims at managing asylum seeker flows both towards and within the EU. The external approach is still based on prohibition while the internal approach continues to be based on coercion following the structure of the Dublin system. In 2020 the new European Commission replaced the Agenda for the New Pact on Migration and Asylum (from now on the New Pact). Similar to the Agenda, the Pact does not change the way in which the EU aims to manage asylum seeker flows. Hadj Abdou (2021) calls this the status quo problem while Petroni (2021) refers to "Old Wine in New Bottles".

2.4.2. The reinforcement of the Dublin system

As I have already explained, the main criticism in the literature of the Dublin system is that it creates incentives for both asylum seekers and member states, which are located at popular entry points into the EU, not to cooperate with the Dublin system. This leads to a situation in which asylum seekers want to ignore the structure of this system by engaging in a secondary movement, which is facilitated by the wave-through policies pursued by these member states to sabotage the functioning of the Dublin transfer system.

The European Commission is aware of this and has therefore adopted a set of policies that aim at both supporting and monitoring member states at the EU's external border so that these member states comply with their responsibilities under EU law to monitor their parts of the EU's external border, register arriving asylum seekers and maintain the minimum asylum standard on their territory.²⁸ If this

²⁷ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, A European Agenda on Migration, COM (2015) 240 final, 13.05.2015., see p. 2.

²⁸ In chapter 3, I will provide an overview of these policies.

approach is executed perfectly it would mean that all asylum seekers in the EU, who ignore the Dublin system by engaging in secondary movements, can be transferred back to the member state to which they have been allocated.

3. Research questions and overview of the dissertation

3.1. Research questions

In this dissertation, I will focus on the impact of the choice to maintain the Dublin system as the EU asylum allocation system with the objective of making the CEAS asylum crisis proof. Asylum crisis proof means that asylum seekers will not need to risk their lives in order to find a place in which they are treated according to the minimum international asylum standard (in order to avoid future humanitarian crises) and that asylum seekers hosted in the EU (both before and after they have received asylum status) adhere to the EU mobility rules and do not engage in irregular migration movements throughout the EU (in order to avoid future Schengen crises).

The first research question is:

Research question 1:

“What are the obstacles in the choice of maintaining the Dublin system for the quest to avoid future EU asylum crises?”

In the second part, I will draw lessons from the positive analysis that I undertook in the first part and evaluate whether the EU can develop an EU asylum allocation system that is better able to avoid future EU asylum crises.

Research question 2:

“Would it be possible to adopt an alternative EU asylum allocation system that is better able to avoid future asylum crises?”

3.2. Overview of the dissertation

The first part that aims to answer the research question *“what are the obstacles in the choice of maintaining the Dublin system for the quest to avoid future EU asylum crises?”* will consist of three chapters.

In **chapter 2** “the 2015/2016 EU Asylum Crisis: a policy crisis”, I will describe the main features of the EU asylum system and review the literature that views the EU asylum system as a policy failure that led to the recent undesirable events during the 2015/2016 EU Asylum Crisis. I will in detail focus on the commonly held explanation in the literature that the wave-through policies pursued by member

states at the EU's external border (by neglecting their responsibilities under EU law) were the main source of the Schengen Crisis. This explains why the European Commission focussed on enhancing compliance rates by member states at the EU's external border.

In **chapter 3** "the need for, and the limitations of, an operational Dublin transfer system as a solution for the Schengen Crisis", I will examine whether the European Commission's policy approach in the program "Back to Schengen – a Roadmap" is likely to be successful in ensuring that asylum seekers will not any longer pose a threat for a borderless Schengen Area. In this program the European Commission advocates policies that aim at restoring the Dublin transfer system by supporting and monitoring member states at the EU's external border to comply with their responsibilities under EU law. This provides destination member states of secondary movements with the ability to transfer asylum seekers back to their member state of first arrival after they have engaged in secondary movements. In this chapter, I will analyse to what extent this chosen approach contributes to preventing asylum seekers' large-scale secondary movements that threaten the existence of the Schengen Area.

In **chapter 4** "From Operation Mare Nostrum to the Criminalisation of NGOs and Libyan pushbacks: the Dublin system as an explanatory factor for the adoption of Italian non-entrée policies?", I will focus on the extent to which the Dublin system can also create incentives for member states at the EU's external border to adopt non-entrée policies to avoid further arrivals of irregular migrants on their territory (as mentioned new non-entrée policies increase the risk that new humanitarian crises will develop). In order to do this I will focus on an Italian policy trend between 2014 and 2020 in which Italy adopted a series of policies that increasingly aim at avoiding further arrivals of migrants on its territory. The question that I address in this chapter is whether the fact that the Dublin system allocates asylum responsibilities based on the member state first entry criterion can offer an explanation for this Italian policy trend.

The second part of this dissertation aims to answer the research question "*Would it be possible to adopt an alternative EU asylum allocation system ~~that is able to~~ avoid future asylum crises?*" and will consist of two chapters.

In **chapter 5** "the fiscal impact of hosting refugees", I aim to shed light on a commonly held view that hosting refugees is inherently costly for the treasury of host states. This view plays an important role for the extent to which states are willing to accept responsibility for refugees. I will do this by identifying factors that improve the fiscal impact of a hosted refugee and by providing an order of magnitude of the fiscal impact of hosting a refugee.

In **chapter 6** “The proposal for a tradable quota system and an attached matching mechanism: its potential, shortcomings and institutional solutions”, I build on a view in the literature that the Dublin system should be replaced by an alternative system based on more burden sharing characteristics. In this chapter, I will use a popular suggestion in the literature: a tradable quota system with an attached matching mechanism. I will evaluate to which extent this system offers a solution to the problems posed by the Dublin system, identify remaining weaknesses and offer institutional solutions to overcome them.

4. Scientific and societal relevance of the dissertation

4.1. Scientific relevance

Legal scholarship has convincingly explained that the 2015/2016 EU Asylum Crisis can mainly be seen as a policy crisis (Den Heijer et al., 2016, p.608-615; Thym, 2016, p.1549-1554; Costello and Mouzourakis, p.283-286). Less is known about the extent to which the adopted policies in the aftermath of the 2015/2016 EU Asylum Crisis are likely to achieve their effect and will contribute to avoiding future asylum crises. In the first part of this dissertation I will move beyond the 2015/2016 EU Asylum Crisis and analyse how asylum seekers and member states (might) change their behaviour based on the changed circumstances after the 2015/2016 EU Asylum Crisis. Following rational choice theory, if a government’s policies restrict the action of an agent, then agents will choose a new action that is preferred under the new circumstances. They will basically shift to a second-best option to maximise their utility level. If this second-best option is not what the government aimed for, then the regulation might be ineffective or even counter-effective. In chapters 3 and 4 of this dissertation I will evaluate how the European Commission’s policies in the aftermath of the 2015/2016 EU Asylum Crisis affect behaviour of asylum seekers and member states and, in this way, I will evaluate the extent to which the policies are expected to reach their desired effect.

The same applies to the proposal in the literature to replace the Dublin system for a tradable quota system. Scholars so far have rightly perceived that the key problem of the Dublin system is that it overburdens a limited number of member states at the EU’s external border because it creates incentives for these member states to adopt policies that contribute to the development of new asylum crises. A popular idea is therefore to replace the Dublin system for a (tradable) quota system with an attached matching mechanism because it can be characterised as a smart tool for burden-sharing. Therefore it should theoretically solve a great deal of the problems of the CEAS. This might be a correct conclusion but one cannot be sure of this without performing a deep analysis on how it affects incentives for both asylum seekers and member states. This analysis will be the core of chapter 6.

4.2. Societal relevance

This dissertation is relevant to society because it addresses a recent crisis that (partly) continues to persist until today. This crisis shows the malfunctioning of the EU asylum regime and how this negatively impacts the functioning of both the international refugee protection regime and the Schengen Area. Ultimately those are asylum seekers and EU citizens that have to bear the consequences of the malfunctioning EU asylum system. New insights on incentive effects of the European Commission's post-crisis approach shed light on the extent to which the EU asylum regime in its current form is able to avoid future humanitarian and/or Schengen crises or whether the European Commission should pursue additional complementary policies or lift current counter-effective policies.

5. Methodology

5.1. Rational choice approach

In this dissertation, I will follow a rational choice approach to international law. Although it is not clearly specified in the literature that views the CEAS as a policy crisis, these scholars implicitly adopt the same approach (e.g. Den Heijer et al (2016), Thym (2016) and Costello and Mouzourakis (2017)). The rational choice approach assumes that actors act rationally by maximising their expected utility level (Paccès and Visscher, 2011, p.2). Actors make rational decisions if they choose the option that best fits their preferences, based on the information and possibilities that they have. Actors are thus assumed to pursue their own interests by maximising their expected utility level. Actors calculate the expected utility level of an option by multiplying the probabilities that different outcomes occur with the utility level of the corresponding outcome. If a certain option yields the highest expected utility level, then the actor has an incentive to choose this option. The rational choice approach is useful to predict how actors will change behaviour if constraints change (Van Aaken, 2019, p.6). If the law restricts the option that actors ideally would like to choose, actors re-orient themselves and choose a new option that optimises their expected utility level under the new circumstances. Such an approach fits therefore well with what I want to study in this dissertation. In the aftermath of the 2015/2016 EU Asylum Crisis the European Commission adopted policies to restrict the behaviour of asylum seekers and member states that led to the 2015/2016 EU Asylum Crisis. A rational choice framework can in this context thus be helpful to predict how these asylum seekers and member states will respond to these policies. This will be informative for the extent to which the policies pursued by the European Commission are expected to be successful in avoiding future EU asylum crises.

5.2. Relevant actors

In this dissertation, I will focus on two groups: asylum seekers / refugees and member states.

Definition: asylum seekers / refugees

The definitions of asylum seekers and refugees are closely related. The CEAS prescribes that member states need to provide asylum to all TCNs in need of refugee or subsidiary protection status. The common distinction between a refugee and an asylum seeker is that someone is a refugee after his asylum claim has been assessed and approved while in the period preceding this approval the person is an asylum seeker (Chin and Cortes, 2015, p.586).²⁹ In this dissertation, I use for simplicity a broad definition of 'refugee' in the sense that it includes both people who have been granted refugee status and people who have been granted subsidiary protection status. Asylum seekers are thus all TCNs that can legitimise their presence on EU territory by claiming that they qualify for (refugee or subsidiary) protection status and these people become refugees as soon as their asylum request has been granted by one of the member states.

Definition: member states

Member states are the member states of the EU. Due to the structure of the Dublin system I will distinguish between member states that are positioned at the EU's external border and the ones that are not.

5.3. What drives asylum seekers / refugees and member states?

What drives asylum seekers / refugees?

A reasoning that people in need of international protection choose not to stay in their state of origin might for some sound artificial as 'choosing' between staying in this state under degrading circumstances (with for instance the risk of being killed) or leaving and moving to another state in which they do not face these degrading circumstances in fact cannot be considered as a choice. Nevertheless, this dissertation will follow a rational choice framework based on the idea that asylum seekers and refugees will choose to move to a particular destination state because it optimises their expected utility level (see also Neumayer (2005, p.391-394) for this approach of conceptualising asylum seekers' choice of destination). It means that asylum seekers and refugees will compare the expected utility level of their status quo (i.e. staying in the state that they are at the moment) with the utility level that they expect to derive in other states. Rational asylum seekers and refugees will do this by assessing the features of potential host states and the probability that they will successfully arrive in these states. They will compare the balance of features and the probability of success of the different options (i.e. the balances of the different destination states and the current state they are

²⁹ It can be argued that legally speaking this distinction is somewhat arbitrary. Hathaway (2005, p.158) argues for instance that it is the factual circumstances that make someone a refugee and not the official validation of these circumstances. In other words, a TCN that meets the criteria of the qualification of a refugee is always a refugee. I opt however to adopt a distinction between asylum seekers and refugees that is commonly made in the social science scholarship.

in) and choose the one that offers the highest expected utility level. In chapter 2, I will provide the main findings in the literature that drive asylum seekers and refugees to migrate.

What drives member states?

Legal scholarship that explains the 2015/2016 EU Asylum Crisis as a policy crisis argues that member states at the EU's external border adopt policies to avoid new asylum duties in order to avoid their asylum systems becoming overburdened. According to these scholars it is thus to be expected that member states adopt policies to avoid new asylum duties if the level of asylum duties that they need to host increases. I adopt a similar view as these scholars. The only difference is that I do not interpret the adoption of policies to avoid further hosting duties from the view that it is a matter of hosting capacity. Instead, I will adopt an interpretation that aligns better with the rational choice approach. Following this approach member states adopt policies based on their hosting policy preferences. I will assume that member states generally want to contribute to the international refugee protection regime by hosting refugees but become increasingly unwilling to accept new asylum responsibilities if the number of refugees that they need to host increases.

5.4. Limitations of the rational choice approach

The choice for a rational choice approach is not without risks. The main risk of a rational choice approach is that the researcher might oversimplify the analysis. The main technique of a rational choice approach is that the researcher defines the factors that provide satisfaction to the actors under analysis. In the specific case of my analysis I adopt assumptions on what drives both asylum seekers / refugees and member states. With respect to asylum seekers / refugees I might for instance oversimplify the analysis if I define asylum seekers / refugees as choosing the member state in which they would like to be hosted based exclusively on economic considerations, while in the real world they might also be motivated by social considerations.

With respect to member states I might furthermore also oversimplify the analysis because I adopt a "black box assumption". This assumption means that member states are the unit of analysis and behave in a way that maximises their expected utility level. To truly understand state behaviour it is however important to acknowledge that within a state there are different interest groups who do not necessarily agree on how the state should behave. The state's chosen behaviour depends thus for an important part on the relative strength of the different interest groups within the state. If for instance a lot of new asylum seekers are about to arrive in Greece, then the response of Greece might depend on which political party is in power at the moment. A black-box approach overlooks the relative strength of interest groups in explaining state behaviour.

Although there is always a risk of over-simplification, the risk can be reduced by using sound assumptions. In this dissertation, I will therefore base my assumptions regarding the preferences of asylum seekers / refugees on the main factors that have been identified in the migration literature as explanatory factors for why migrants move and how they choose their destination state. The same applies for the preferences of member states. In this way, I aim to offer a credible analysis on how asylum seekers / refugees and member states will respond to the policy approach chosen by the European Commission in the aftermath of the 2015/2016 EU Asylum Crisis.

6. Scope of research

The dissertation applies an economic analysis on the extent to which the current design of the CEAS, based on the reinforcement of the Dublin system, contributes to the goal of preventing future EU asylum crisis and what it would solve if the Dublin system would be replaced for a (tradable) quota system. It is important to express three issues that are out of the scope of this dissertation but that should be taken into account by the EU when it designs EU asylum policy.

Firstly, the goal behind the design of the CEAS is broader than only preventing asylum crises in the EU. In Law & Economics it is common to study the efficiency of rules. This involves an analysis on which set of rules maximises the social welfare level.³⁰ In this context, it is important to emphasise that this dissertation does not make any claims on what would be an efficient design of the CEAS. Instead, it aims to provide insights on the extent to which the current design of the CEAS contributes to preventing future EU asylum crises and what it would resolve if the Dublin system is replaced for a (tradable) quota system. This informs the European Commissions on how they can design a CEAS that truly contributes to preventing future EU asylum crises. For the ultimate design of the CEAS the European Commission ultimately needs to weigh this goal vis-à-vis other goals of the CEAS.

Secondly, this dissertation provides insights on how economic theory can contribute to the design of a CEAS that aims at preventing future EU asylum crises. It is important to emphasise that the core of this research project concerns a positive economic analysis. The goal is to predict how asylum seekers / refugees and member states will behave under the current design of the CEAS based on the Dublin system (part 1) and under a CEAS if the Dublin system would be replaced for a (tradable) quota system. I only bring the findings of the two parts together in the concluding chapter of this dissertation (i.e. chapter 7). In this chapter, I provide some recommendations on how the EU can improve the

³⁰ This would also involve a choice whose interests are included in this social welfare maximisation exercise (i.e. should the EU asylum system only take into account the interest of EU citizens, which means that the interests of asylum seekers are only included in the analysis as long their interests align well with the interests of EU citizens, or should the interests of asylum seekers generally be included in the maximisation exercise).

functioning of the CEAS (in terms of that it improves incentives for asylum seekers / refugees and member states) by replacing the Dublin system for a new EU asylum allocations system based on more burden sharing. It should be noted that, although ethical considerations are not within the scope of this dissertation, there might be ethical boundaries that the design of the the CEAS should honour.

Thirdly, in the analysis I focus on how the choice of EU asylum allocation shapes incentives for asylum seekers / refugees and member states and how this relates to the development of new EU asylum crises. There are also other actors, most notably EU institutions and EU agencies, that play a role in the functioning of the CEAS and the development of EU asylum crises. Frontex is a key example because it has been blamed for engaging in so-called push backs³¹ which might increase human suffering at the EU's external border. It is however important not to forget about the main research questions of this dissertation. This dissertation focuses on the choice of EU asylum allocation system and how this matters for the goal of the CEAS to prevent future EU asylum crises. It means that, although it does not fall within the scope of this dissertation, future research can be carried out to focus on how the choice of EU asylum allocation system creates incentives for EU institutions and EU agencies and how these incentives relate to the goal of preventing future EU asylum crises.

³¹ European Parliamentary Research Centre, Pushbacks at the EU's external borders, March 2021, p.5.

Chapter 2

The 2015/2016 EU Asylum Crisis: a policy crisis

1. Introduction

This chapter is a supporting chapter for the rest of the dissertation in which I will sketch the common background for the chapters that are still to come. This will entail a general description of the EU legal framework with respect to how it aims to manage asylum seekers and refugees in the EU, an overview of the literature that explains the recent events during the 2015/2016 EU Asylum Crisis as a policy crisis and a characterisation of the EU's policy response in the aftermath of this crisis.

2. The EU's management of TCNs

I will start with a general description of how the EU aims to manage migration by Third Country Nationals (TCNs) in general. The reason is that asylum seekers and refugees are a special category of TCNs. Member states started to seriously cooperate on migration and external border affairs after the abolishment of internal borders between them and hence started to share one external border. Member states needed therefore to coordinate on the entry and residence conditions of TCNs (Cherubini, 2015, p. 131). In order to describe how the EU manages TCNs it is useful to use the distinction from Cox and Posner (2007) between the first and the second order structure of immigration law. The first-order structure of immigration law deals with the number and type of immigrants that are allowed to access a state while the second-order structure deals with the design of legal rules and institutions to achieve these first-order policy goals (p.809). Thus the first question deals with who is allowed to enter the territory of the EU and what are their movement rights within the EU. The second question addresses how the EU enforces this.

2.1. The first-order structure: access and residence rights of TCNs

2.1.1. Visas, residence permits and limited intra-EU mobility rights

Primary EU law prescribes that the EU has to establish entry and residence conditions for TCNs.³² How the EU effectively aims to do this is outlined in secondary EU law. Except for TCNs from a limited number of countries³³, TCNs need a visa or residence permit of an EU member state to access and stay

³² Article 77(2)(a) TFEU (for short-stay) and article 79(2)(a and b) TFEU (for long-stay).

³³ REGULATION (EU) 2018/1806 (Visa Code) (slightly amended in REGULATION (EU) 2019/1155) establishes that nationals of third countries listed in annex 1 are required to possess a visa when crossing an external EU border (article 3) while nationals of third countries listed in annex 2 are exempt from this requirement for stays of no more than 90 days in any 180 days period (article 4).

in the EU.³⁴ Member states thus preserve the right to allow TCNs to reside on their territory. Importantly, TCNs have initially only limited intra-EU mobility rights to travel to other member states. These limited intra-EU mobility rights imply that a TCN can (generally) only reside and work in the member state that provided them with a visa or a resident permit. Only after they receive long-term residence status (after five years of legal stay in a member state) are the intra-EU mobility rights of TCNs extended.³⁵ The fact that TCNs have to wait for a considerable period of time before they receive free movement rights in the EU has been labelled as a spatial temporal waiting zone (Della Torre and De Lange, 2018, p.1412).

2.1.2. The special case of asylum seekers

The EU's management of TCNs takes into account that its member state also face obligations that stem from international law. All member states signed for instance the 1951 UN Refugee Convention and its 1967 Protocol. They have therefore to adhere to obligations that follow from these international treaties. Primary EU law supports this by prescribing that the EU needs to design an EU asylum system that corresponds with member states' duties following this Convention and its Protocol.³⁶

Member states also face obligations from other international treaties that they need to take account. The ECHR plays an important role on asylum affairs in the EU. Although this Convention does not contain provisions regarding asylum rights, it provides a prohibition for the participating states to torture any human being³⁷ and provide basic rights to all human beings that fall under their jurisdiction.³⁸ Following the case *Soering vs. United Kingdom*, this includes the duty not to return a human being to a state in which he faces degrading human circumstances (Cherubini, 2015, p.102-103). Member states need to take into account this duty when they implement EU asylum law.

³⁴ The Schengen Borders Code (REGULATION (EU) 2016/399) prescribes in article 6(1) the entry conditions to EU territory for TCNs that are allowed to stay on EU territory for a maximum of 90 days in a period of 180 days. The main criteria are that TCNs need to be in the possession of a valid travel document (sub a), a short-stay visa (unless the Visa Code releases TCNs from certain states from this obligation) (sub b) and they do not pose a threat for member states (sub c to e). Article 6(3) of this same Regulation outlines that TCNs that are in the possession of a long-stay visa or a residence permit shall be able to enter any member state in order to reach the member state that provided this visa or residence permit.

³⁵ The Schengen Implementing Convention outlines the movements rights of TCNs within the Schengen Area (article 19 to 24). TCNs are generally allowed to travel throughout the EU. Until TCNs receive long-term residence status (which can be acquired after 5 years of residence in a member state – article 4(1) of Directive 2003/109/EC (Long-Term Residents Directive)), this is limited to a certain period. Residence permit holders are for example only allowed to travel throughout the EU for a maximum of 90 days in every 180 day period (article 21). In contrast, TCNs with long-term residence status have similar movement rights as EU citizens (article 15 of Directive 2003/109/EC (Long-Term Residents Directive)).

³⁶ Article 78(1) TFEU.

³⁷ Article 3 ECHR.

³⁸ Article 1 ECHR.

2.2. The second-order structure: the enforceability

The second order-structure of the EU's migration management system aims to enforce that only TCNs who have a right to be present on EU territory can be present. This is done by means of a mixture of external border and return policies. Primary EU law prescribes that the EU must ensure that external borders of the EU are effectively monitored to ensure that only TCNs that have the right to enter the EU are allowed to do this.³⁹ Similarly, it instructs that the EU shall design effective return policies to address the unauthorised presence of TCNs on EU territory.⁴⁰

2.2.1. The EU's external border management

Member states have the main duty to guard their part of the EU's external border but they are supported by the European Coast and Border Guard.⁴¹ In order to ensure that only those TCNs can enter the EU territory that have the right to do so, the member state needs to engage in border surveillance to avoid unauthorised border crossings.⁴² If this is successful, then all TCNs will be subject to checks at the EU's external border. Border guards will examine whether TCNs have the right to enter and in the fulfilment of their task they will always respect the human dignity of TCNs.⁴³ If a TCN does not meet the entry conditions he will be denied access to the territory of the EU.⁴⁴

2.2.2. The EU's returns management

Similarly to the EU's management of the external border, member states are primarily responsible to return TCNs that are illegally present on their territory by issuing a return decision.⁴⁵ It is important to notice that some of the TCNs that are illegally present on the territory of a member state have a right to stay in another member state because they have a residence permit of that member state. These TCNs need to return to this member state.⁴⁶ After the return decision has been issued, the TCNs first have a period in which they can depart voluntarily.⁴⁷ If the TCNs does not do this, then the member state will need to return the TCN forcefully.⁴⁸ A member state always retains the right to offer a TCN

³⁹ Article 77(1)(b) TFEU.

⁴⁰ Article 79(2)(d) TFEU.

⁴¹ The European Coast and Border Guard Regulation (REGULATION (EU) 2016/1624) states in article 5(1) that the European Coast and Border Guard and the national border authorities will together implement successful external border management. The article outlines that that the national border authorities retain the primary responsibility for the management of their sections of the EU's external border.

⁴² Article 13 of the Schengen Borders Code (REGULATION (EU) 2016/399).

⁴³ Articles 7 and 8 of the Schengen Borders Code (REGULATION (EU) 2016/399).

⁴⁴ Article 14 of the Schengen Borders Code (REGULATION (EU) 2016/399).

⁴⁵ Article 6(1) of the Returns Directive (DIRECTIVE 2008/115/EC).

⁴⁶ Article 6(2) of the Returns Directive (DIRECTIVE 2008/115/EC).

⁴⁷ Article 7 of the Returns Directive (DIRECTIVE 2008/115/EC).

⁴⁸ Article 8 of the Returns Directive (DIRECTIVE 2008/115/EC).

that is illegally present on its territory a residence permit. This gives the TCN the right to stay on the territory of the member state.⁴⁹

3. The EU's management of asylum seekers and refugees

3.1. The external and the internal approach

With respect to the EU's management of asylum affairs it is important to distinguish between the external and the internal approach. The external approach involves coordinating migration movements by asylum seekers before they reach the EU. This approach falls within the EU's Global Approach to Migration and Mobility (from now on: GAMM). In this approach the EU aims to collaborate with third countries to coordinate migration movements towards the EU. The internal approach deals with how the EU manages its asylum affairs after an asylum seeker reaches the EU. This is covered by the CEAS. Den Heijer et al. (2016, p.607-608) argue that that the external dimension of EU asylum policy is based on **prohibition** while the internal dimension is based on **coercion**. The prohibition approach aims at preventing asylum seekers from arriving in the EU. The coercion approach allocates the asylum seekers that managed to arrive in the EU to the different member states without taking into account the preferences of asylum applicants on where they would like to be hosted.

3.2. An external approach based on prohibition

The EU's external asylum policy is based on the idea that, unless an asylum seeker has permission to enter the EU (for instance by means of resettlement of an asylum seeker from a conflict zone to an EU member state), it should be as difficult as possible for the asylum seeker to reach the EU. The EU does this by collaborating with both private actors and states that asylum seekers need to cross before they are able to reach the EU (Den Heijer et al., 2016, p.618-619). The visa regime⁵⁰ involves that TCNs from practically all refugee producing states need a visa to legally enter the EU (Mau et al., 2015). The EU adopted carrier sanctions to punish airline carriers that allow TCNs, who do not have a legitimate reason to be on EU territory, to take a flight to the EU. The adoption of these carrier sanctions has also been referred to as the privatisation of immigration control (Rodenhäuser, 2014). The combination of the visa regime and the carrier sanctions make it thus practically impossible for most asylum seekers to reach any member state by plane. The alternative is for asylum seekers to move to third states surrounding the EU and trying to reach the external EU border from there. The EU has however also closed deals with third states surrounding the EU to prevent asylum seekers from easily reaching the EU's external border (Fitzgerald, 2019, p.177-180). This results both in measures that aim at

⁴⁹ Article 6(4) of the Returns Directive (DIRECTIVE 2008/115/EC).

⁵⁰ See subsection 2.1. of this chapter.

preventing asylum seekers from easily accessing these states and measures that make it difficult for asylum seekers to leave these states. As an example of the former, the EU convinced Algeria, Egypt, Libya, Morocco and Tunisia that Syrians in the aftermath the Syrian Civil War need a visa in order to enter their territory (Den Heijer et al., 2016, p.620-621). As an example of the latter, Italy has since 2000 cooperated with Lybia to avoid TCNs from crossing the Mediterranean Sea and reaching Italy (De Guttry et al., 2018, p.51-55). This collaboration between Italy and Lybia broke down in 2011 after the fall of the Ghadaffi Regime but has in recent years been restored.

3.3. An internal approach based on coercion

To coordinate asylum policy in an EU without internal borders the EU created the CEAS. The most important pieces of legislation in the current version are the Dublin III Regulation, the revised Eurodac Regulation and three directives that deal with the substantive and procedural aspects of EU asylum law (Papagianni, 2016, p.323).

3.3.1. The allocation of asylum duties: The Dublin system (a system based on coercion)

Allocation based on the member state of first-entry criterion

The Dublin system allocates asylum duties to the different member states for the asylum seekers that managed to file an asylum application in the EU. The system does this based on a hierarchical list of criteria. This hierarchical list, which can be found in the Dublin III Regulation⁵¹, prescribes that an asylum seeker should be allocated to the member state that:

1. Already hosts a family member of the asylum seeker (articles 8 - 11)
2. Issued the asylum seeker a visa (article 12).
3. Did not manage to avoid that the asylum seeker entered the EU in an irregular manner for the first time (article 13).
4. Waived the visa requirement of an asylum seeker (article 14).
5. Received the asylum application for the first time (article 3).

This system is mainly based on the authorisation principle: *“the more a member state has consented (explicitly or tacitly) to the penetration of its territory by an asylum seeker, the more it is responsible”* (Hurwitz, 1999, p.648). Following Hurwitz (p.652) only the family criteria are not based on this principle. In practice, the member state of first-entry criterion is the dominant criterion that allocates asylum responsibilities to member states (Maiani, 2016a, p.112; Costello and Mouzourakis, 2017, p.270). Den Heijer et al. (2016, p.618) call this a **system of coercion** because asylum seekers do not have a voice in which member state they will be hosted.

⁵¹ Regulation (EU) No 604/2013 (Dublin III Regulation).

The goal of the Dublin system: avoiding refugees in orbit and asylum shopping

According to Maiani (2017, p.624-625) the Dublin system has three important goals:

1. To guarantee asylum seekers' access to the asylum procedure in one of the EU member states after an asylum seeker applied for asylum in the EU.
2. To prevent that asylum seekers launch asylum applications in multiple member states.
3. To prevent that asylum seekers can choose in which member state they are hosted.

The first goal aims to prevent so-called "refugees in orbit": a situation in which a person is not able to find a member state that is willing to examine his asylum claim. The second and the third goal address so-called "asylum shopping": behaviour of asylum seekers that aims at making sure that their asylum claim will be accepted somewhere in the EU and preferably in a member state they like.⁵²

The Dublin system aims to achieve these three goals by allocating asylum seekers to member states based on a set of clear criteria. The idea is that it is impossible for a member state to deny responsibility for an asylum seeker if the criteria point out that this member state is responsible to host this person. Similarly, it provides clear instructions on in which member state an asylum seeker ought to launch its asylum claim.

3.3.2. Member states' asylum duties: the basics

A member state's responsibility for an asylum seeker entails duties during and after the asylum procedure. A member state needs to implement some basic rights for an asylum seeker during the asylum procedure. It needs for instance to respect the non-refoulement principle⁵³ (from which it follows that states are not allowed to return asylum seekers to their state of origin if they face a risk of being persecuted there, or there is a legitimate fear that they will face degrading humanitarian conditions there) and guarantee family unity.⁵⁴ Furthermore, it has to provide an asylum seeker with the right to travel within the member state⁵⁵ and offer access to basic healthcare⁵⁶, education services (for minors)⁵⁷ and its labour market (within 9 months).⁵⁸

⁵² See Thym (2016, p.1653) for a similar explanation of the goals of the Dublin system and Barhou des Places (2003, p.3.) for a more elaborate description of asylum shopping.

⁵³ Article 22 DIRECTIVE 2011/95/EU (Qualifications Directive).

⁵⁴ Article 23 DIRECTIVE 2011/95/EU (Qualifications Directive).

⁵⁵ Article 7 DIRECTIVE 2013/33/EU (Reception Conditions Directive).

⁵⁶ Article 19 DIRECTIVE 2013/33/EU (Reception Conditions Directive).

⁵⁷ Article 14 DIRECTIVE 2013/33/EU (Reception Conditions Directive) for during the asylum procedure and article 27 DIRECTIVE 2011/95/EU (Qualifications Directive) after the asylum procedure has been approved.

⁵⁸ Article 15 DIRECTIVE 2013/33/EU (Reception Conditions Directive) for during the asylum procedure and article 26 DIRECTIVE 2011/95/EU (Qualifications Directive) after the asylum procedure has been approved.

The member state needs to host the asylum seeker also after the asylum procedure if the asylum claim turns out to be successful. After having become a refugee the rights of the asylum seeker are moreover extended.⁵⁹ On top of the responsibility for an asylum seeker during the asylum procedure the member state needs for example to issue residence permits⁶⁰ and furthermore provide access to social welfare provisions.⁶¹ The residence permit allows recognised refugees to be present in other member states for a maximum of 90 days every 180 days.⁶² It is important to notice that an asylum seeker's rights like access to educational services, healthcare services and social welfare provisions entail a non-discrimination duty for the member state to treat an asylum seeker in the same way as its own citizens.⁶³

If the asylum claim turns out to be unsuccessful, the member state needs to return the asylum seeker to his state of origin⁶⁴ or host him by providing a residence permit.⁶⁵ It means that it is the member state, which rejects the asylum claim, that nevertheless has to resume responsibility to host rejected non-deportable asylum seekers.⁶⁶

⁵⁹ The duties of a member state towards an asylum seeker (it is responsible for based on the Dublin criteria) follow a similar structure as under international refugee law. These duties follow an incremental character. Under international refugee law the set of rights that an asylum seeker has in a state grows if the bond between the asylum seeker and the state grows (Hathaway, 2005, p.154). Similarly, EU law provides an initial set of rights to an asylum seeker in a member state during the asylum procedure and these rights are extended with an additional set of rights if the asylum seeker receives official asylum status.

⁶⁰ Article 25 DIRECTIVE 2011/95/EU (Qualifications Directive)

⁶¹ Article 29 DIRECTIVE 2011/95/EU (Qualifications Directive)

⁶² Article 21 Schengen Implementing Convention.

⁶³ For educational services for minors the non-discrimination duty applies both during the asylum procedure and after acceptance of the asylum application (article 14 DIRECTIVE 2013/33/EU (Reception Conditions Directive) and article 27 DIRECTIVE 2011/95/EU (Qualifications Directive)). For healthcare services the non-discrimination duty only applies after acceptance of the asylum application (article 30 DIRECTIVE 2011/95/EU (Qualifications Directive)). During the asylum procedure the asylum seeker only has the right to receive basic healthcare services (article 19 DIRECTIVE 2013/33/EU (Reception Conditions Directive)). Asylum seekers only has access to social welfare provisions after their asylum claim has been accepted (article 29 DIRECTIVE 2011/95/EU (Qualifications Directive)).

⁶⁴ Article 6(1) DIRECTIVE 2008/115/EC (Return Directive) prescribes that member states need to issue a return decision if an asylum seeker is found to have an illegal status on its territory. Since asylum seekers whose asylum claim turns out to be unsuccessful do not receive a legal status, these people ought to be returned. Following article 6(4) DIRECTIVE 2008/115/EC (Returns Directive) this obligation ceases if the member state decides to provide a residence permit to a person that is found to have an illegal status on its territory.

⁶⁵ Following article 6(4) DIRECTIVE 2008/115/EC (Returns Directive) the obligation to return an illegal person ceases if the member state afterwards decides to provide a residence permit to this person.

⁶⁶ Article 6(1) Article 18 (1.d) REGULATION 604/2013 (Dublin III Regulation) ensures that the member state that rejected the claim remains responsible to either host or return the person. The article prescribes that the member state that was responsible for assessing an asylum claim ought to take back asylum seekers whose asylum application it has rejected and who moved to other member states.

3.3.2. Supporting policies to make the Dublin system work

Harmonisation of member states' asylum procedures

Asylum seekers obviously prefer to be hosted in member states that offer better asylum conditions. For this reason the harmonisation of member states' asylum policies is one of the key aims of the CEAS (Den Heijer et al., 2016, p.609). It reduces incentives for asylum seekers to engage in asylum shopping. Currently, there are three directives that provide minimum standards on how member states should fulfil their asylum responsibilities: the Qualifications Directive, the Receptions Conditions Directive and the Asylum Procedures Directive.⁶⁷

The creation of a transfer system

The CEAS also created a responsive mechanism to ensure that asylum seekers are not able to ignore the Dublin system. The Dublin Regulation provides member states with a right to transfer an asylum seeker back to another member state if this member state should be responsible for hosting this asylum seeker according to the Dublin criteria.⁶⁸ This transfer system relies on asylum seekers and refugees being registered in their member state of first entry and that the minimum EU asylum standard is maintained in this member state. The Eurodac registration system ensures that multiple asylum applications from the same person in different member states are detected (Maiani, 2017, p.625). Member states are thus not able to deny that an asylum seeker arrived for the first time on their territory if all asylum seekers are registered upon their arrival in the EU. The European Court of Human Rights (from now on: ECtHR) and the Court of Justice of the EU (from now on: CJEU) have furthermore established that Dublin transfers cannot be carried out to member states in which the

⁶⁷ DIRECTIVE 2011/95/EU (the Qualifications Directive), DIRECTIVE 2013/33/EU (the Receptions Conditions Directive) and DIRECTIVE 2013/32/EU (the Asylum Procedures Directive).

⁶⁸ Article 18 of REGULATION (EU) No 604/2013 (Dublin III Regulation) provides an obligation for member states to accept responsibility for an asylum seeker that according to the Dublin criteria fall under their responsibility. This occurs by means of a take charge or a take back request. Article 20 to 33 of the same Regulation provide rules on how these take charge and take back requests should be organised.

rights of asylum seekers are likely to be violated (Armstrong, 2020, p.354-355).⁶⁹ The most famous case rulings in this context are *M.S.S. vs. Belgium and Greece*⁷⁰ and *Tarakhel vs. Switzerland and Italy*⁷¹

4. The main explanatory factors of the 2015/2016 EU Asylum Crisis

Both in 2015 and in 2016 a large number of TCNs headed for the EU. The first order consequence was a humanitarian crisis because the number of TCNs that came into trouble in the Mediterranean Sea increased. The second order consequence was that a large number of these migrants managed to enter the EU in an irregular manner and started to move throughout the EU in so-called secondary movements. The latter led to a Schengen Crisis when some popular destination member states closed their internal Schengen borders.

4.1. The humanitarian crisis: the lack of safe access to asylum in the EU

The aim of the prohibition approach is that asylum seekers are not able to arrive at the EU's external border. During the 2015/2016 EU Asylum Crisis a large number of asylum seekers nevertheless tried to reach the EU in order to apply for asylum. Den Heijer et al. (2016, p.621-623) explain that the combination of the prohibition approach and the inability of Syrian refugees to find an acceptable way of life in the region (i.e. in Syria and the countries around Syria) created strong incentives for these asylum seekers to look for opportunities to find a safe place elsewhere and the EU was such a place.

⁶⁹ In subsection 2.1., I shortly outlined why asylum seekers, which fall under the jurisdiction of an EU member state, both derive minimum rights from the ECHR and EU law. These minimum rights need to be guaranteed by the member states. It explains why Dublin transfers can be forbidden if the member state, which is responsible for hosting an asylum seeker under the Dublin system, violates asylum seekers' minimum rights from the ECHR or EU law.

⁷⁰ In the case *M.S.S. vs. Belgium and Greece* an Afghan national entered the EU in Greece. He was fingerprinted by the Greek officials and, since he did not apply for asylum in Greece, he was ordered to leave the EU. Instead, he moved to Belgium and applied for asylum there. Belgium transferred him back to Greece arguing that under the Dublin Regulation it would be Greece that should be responsible to examine the asylum claim of this person. After he arrived in Greece, he was allowed access to the Greek asylum procedure. During this period he was first detained and later released without providing him with shelter and minimum living conditions. The Grand Chamber of the ECtHR decided in this case that Greece violated article 3 ECHR by exposing asylum seekers to degrading living conditions. Next to this decision, the Grand Chamber even went a step further by arguing that there is also a responsibility for transferring member states (in this case Belgium) to examine whether the member state to which they transfer asylum seekers treats them in a way that meets minimum living conditions.

⁷¹ In the case *Tarakhel vs. Switzerland and Italy* an Afghan family entered the EU in Italy. The family decided to leave Italy and move to Switzerland due to the poor and violent living conditions in the Italian reception centre. After having applied for asylum in Switzerland, Switzerland wanted to transfer the family back to Italy. The Grand Chamber of the ECtHR offered in this case a more nuanced assessment than in the *M.S.S. vs Belgium and Greece* case (Schmidt, 2016, p.73-74). The Grand Chamber did not provide an absolute prohibition of transfers to Italy. Instead, it held that in the specific case of this family, which involved children, it was not permitted to transfer them back to Italy. Following this case, transferring member states (in this case Switzerland) have thus to make an assessment of whether the basic human rights of the specific individual or family that is about to be transferred are likely to be violated if they are transferred back (Costello and Mouzourakis, 2017, p.286).

Table 1 shows indeed that in 2015 the number of Syrian asylum seekers hosted in the Middle East far exceeded the number of Syrian asylum seekers hosted in the EU. Importantly, international humanitarian assistance fell short during this period. The United Nations Office for the Coordination of Humanitarian Assistance (UNOCHA), which aims to coordinate adequate global emergency responses by, among other ways, collecting funds from the international community, reported in 2015 that for Syria only 50% of the required funding had been received (and for the Syrian Regional Refugee and Reliance Plan only 62%).⁷² The consequence is that a large number of asylum seekers that were hosted in the region did not find an acceptable form of subsistence. The fact that there are only a very limited number of legal avenues for asylum seekers to apply for asylum in the EU (Den Heijer et al., 2016, p.622; Costello and Mouzourakis, 2017, p.278-280), motivated a large number of asylum seekers to risk a dangerous journey in order to find a safe haven in the EU.

Table 1: the number of Syrians hosted in the region and in the EU in 2015	
Turkey	1.805.255
Lebanon	1.172.753
Jordan	629.128
Iraq	249.726
Egypt	24.055
Total in the region	3.880.917
EU	580.800
Source: the number of Syrian hosted in the region is based on data from the UNHCR. ⁷³ The number of Syrians hosted in the EU is approached by summing the number of asylum applications by Syrians in the EU (+ Iceland, Liechtenstein, Norway and Switzerland) over the period 2011-2015. This data is retrieved from Eurostat (data code: MIGR_ASYAPPCTZA).	

4.2. The Schengen Crisis: the inability to avoid irregular secondary movements

If the CEAS functions well, there should not be irregular secondary movements of asylum seekers and refugees. Asylum seekers should apply for asylum upon arrival and remain in the member state that they have been allocated to based on the Dublin criteria (in practice their member state of first arrival) or return to their state of origin if their asylum claim is rejected. Irregular secondary movements by asylum seekers have however been standard practice since the origins of the Dublin system (Thym, 2016, p.1550). This clearly indicates that the CEAS is not functioning as its creators envisioned. During the 2015/2016 EU Asylum Crisis this became a concern due to the total number of asylum seekers that

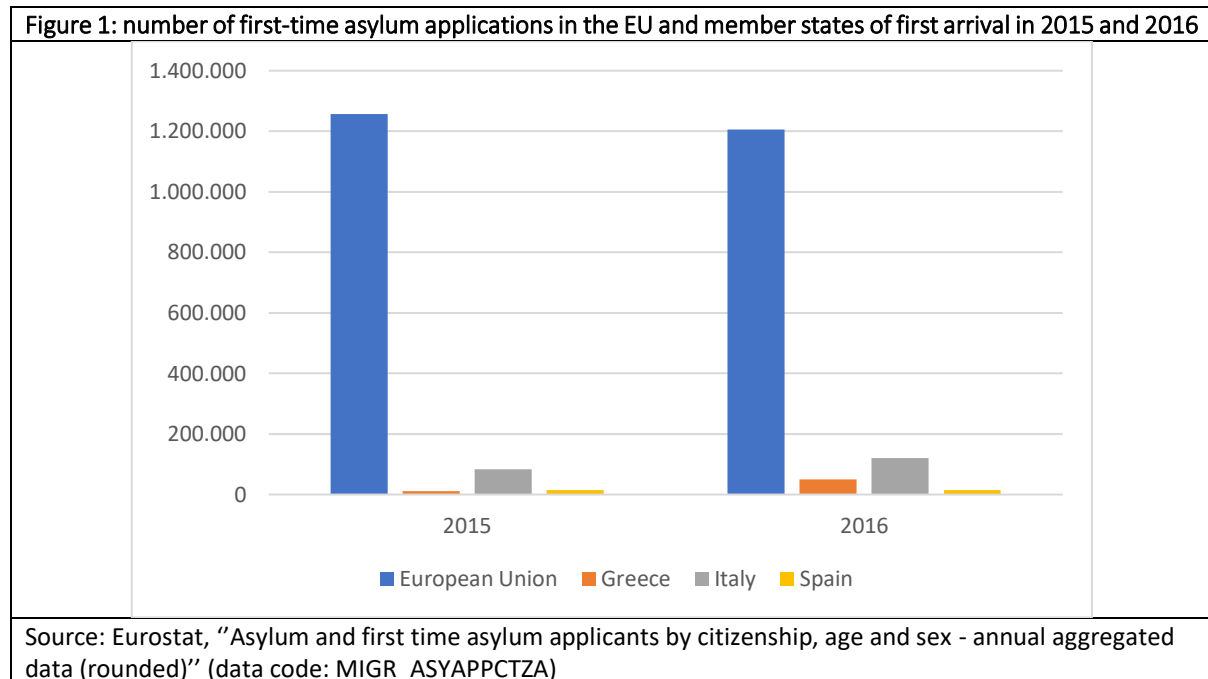
⁷² See UNOCHA's report "World Humanitarian Data and Trends 2015". The report furthermore reports that with the amount of funding in 2014 there was \$104 per Syrian refugee from general humanitarian assistance and \$354 from the Syrian Regional Refugee and Reliance Plan.

⁷³ See <https://www.unhcr.org/news/press/2015/7/559d67d46/unhcr-total-number-syrian-refugees-exceeds-four-million-first-time.html> (accessed on 26/07/2021).

engaged in these irregular secondary movements (as a consequence of that a larger number of asylum seekers had entered the EU).

4.2.1. Large-scale irregular secondary movements during the 2015/2016 EU Asylum Crisis

Figure 1 shows for 2015 and 2016 both the total number of asylum seekers that applied for asylum in the EU and the number of asylum seekers that applied for asylum in Spain, Italy and Greece.



Given the limited legal avenues for asylum applicants to apply for asylum in an EU member state, it means that the majority arrived in an irregular manner at the EU's external border. The asylum seekers that accessed the EU in the aftermath of the Syrian Civil War mainly reached the EU's external border of member states that are located at the Mediterranean Sea (Costello and Mouzourakis, 2017, p.283). These members should thus be responsible for a significant share of the new asylum applicants both in 2015 and in 2016. Figure 1 shows however that in both years most asylum applicants engaged in asylum shopping by not launching their (first) asylum application in one of these member states. It means that they ignored the criteria of the Dublin system by engaging in a secondary movement from their member state of first arrival to a different member state for the purpose of applying for asylum there. Table 2 shows furthermore that the Dublin transfer system was only to a very limited extent able to address these irregular secondary movements by asylum seekers throughout the EU. Between 2015 and 2019 only 27.387⁷⁴ asylum seekers have been transferred back to Greece, Italy and Spain.

⁷⁴ The total number of asylum seekers that have been transferred back to Greece, Italy and Spain between 2015 and 2019 (77 + 24.134 + 3.176 = 27.387).

This is a very low number as compared to the number of refugees that had moved onwards in 2015 and 2016.

		2015	2016	2017	2018	2019	Total
Greece	Requests	137	5.787	2.549	8.807	13.382	30.662
	Transferred	15	10	1	18	33	77
Italy	Requests	24.990	64.844	26.627	41.911	34.921	193.293
	Transferred	2.180	4.061	5.678	6.351	5.864	24.134
Spain	Requests	Not reported	6.111	5.745	10.762	7.089	29.707
	Transferred	Not reported	938	619	810	809	3.176

Source: Eurostat, two data sources "Incoming 'Dublin' requests by submitting country (PARTNER), type of request and legal provision" (online data code: MIGR_DUBRI) and "Incoming 'Dublin' transfers by submitting country (PARTNER), legal provision and duration of transfer" (data code: MIGR_DUBTI).

4.2.2. Asylum seekers and member states at the EU's external border: a problem of incentives

The main explanation behind the large-scale irregular secondary movements throughout the EU is that asylum seekers did not want to stay in their member state of first arrival and that these member states of first arrival encouraged and facilitated their onward movement.

Perceived differences in attractiveness of member states

Den Heijer et al. (2016, p.608) explain that secondary movements of asylum seekers within the EU occur due to perceived differences in attractiveness of member states. The result is that asylum seekers deem some member states as more attractive to be hosted in than others. It explains why asylum seekers are interested in asylum shopping.

A common way to think about the relative attractiveness of member states is to think in terms of pull factors. Following this framework, asylum seekers prefer to move to the member state that "pulls" them most. The scale on which secondary movements occurred in 2015 and 2016 indicates that the EU's harmonisation agenda has not been able to sufficiently reduce (or ideally eliminate) differences in attractiveness of member states. There are several explanations for this.

A first explanation is that due to legal design and implementation deficits the harmonisation agenda does not ensure equal asylum conditions in all member states. As an example, there remains for instance considerable heterogeneity in member states' recognition rates for asylum applicants from the same state of origin (Toshkov and De Haan, 2013, p.673-676). Den Heijer et al. (2016, p.609-610) offer some explanations for the failure to treat asylum seekers everywhere in the EU in the same way. Firstly, the harmonisation agenda requires implementation by the member states. Due to member states' different national understandings (opportunistically or not) on how EU asylum law should be interpreted, EU asylum law is not implemented in the same way across member states. This is aggravated due to the fact that the Directives so far only provide minimum standards which leaves

member states free to adopt more generous positions. Secondly, EU asylum law requires member states to treat recognised refugees and its nationals as equals in the fields of education, welfare and healthcare (see also (Thym, 2016, p.1553)). Since there are differences in the extent to which member states offer education, welfare, and healthcare services to their own citizens, the extent to which refugees have access to these services also depends on in which member state they are hosted.

A second explanation relates to the fact that asylum seekers do not only favour some member states more than others based on the offered asylum conditions. Economic opportunities in a member state also turn out to be important. Neo-classical economic theories hypothesise in this context that individuals make a rational choice to migrate in order to maximise their income (Ranis and Fei, 1961; Harris and Todaro, 1970). Later, in a stream of literature that is also referred to as the new economics of migration, it was argued that this view was too simplistic and that migration choices are made on the family level and not on the individual level (Massey et al., 1993, p.436). According to this literature families decide that (some) family members need to migrate for the purpose of income risk spreading of the family (Stark and Levahri, 1982; Stark and Bloom, 1985). These two economic theories hold however in common that labour market opportunities make some destination member states more attractive than others. Another important factor that makes some member states more attractive than others is the presence of social networks in a member state (Massey, 1990; Massey et al., 1993). Personal ties with people already residing in a member state can make it easier for an asylum seeker to find their way in a new member state.⁷⁵

A non-operational Dublin transfer system

Since there remain persistent differences in attractiveness between member states, an operational transfer system is crucial to avoid asylum seekers influencing in which member state they are hosted by engaging in a secondary movement. The reason is that in the absence of an operational transfer system asylum seekers can apply for asylum in a different member state than their member state of first arrival and they cannot be transferred back to their member state of first arrival. An operational transfer system is thus needed to prevent asylum seekers' asylum shopping. The transfer system was during the 2015/2016 EU Asylum Crisis largely disabled (or non-operational) however due to two factors. Firstly, asylum seekers were not always registered upon their arrival in the EU. Secondly, the earlier mentioned case rulings by respectively the ECtHR and the CJEU hampered the application of the Dublin transfer system during the 2015/2016 EU Asylum Crisis even if asylum seekers had been

⁷⁵ Studies indeed repeatedly show that asylum seekers are more inclined to move to member states in which already a lot of people from the same country of origin reside (see for instance Hatton (2004, 2009)). Barthel and Neumayer (2015) find moreover that these networks do not only consist of people from the same country of origin. They find that asylum seekers are also more inclined to apply for asylum in a member state if in this member state there are already migrants from countries that are geographically close to their state of origin.

registered by their member state of first entry. The reason is that asylum seekers' rights were likely to be violated in Greece and Italy. Both asylum seekers and member states at the EU's external border had a clear role in these two factors.

Since a functioning Dublin transfer system hampers asylum seekers' free-choice of destination, many asylum seekers have used several strategies to sabotage the transfer system in order to increase the likelihood that they can successfully engage in asylum shopping. Two ways in which this occurred was by avoiding to be registered and by destroying evidence of registration by means of self-harm (Maiani, 2016b, p.22; 2017, p.626; Costello and Mouzourakis, 2017, p.285). This makes it more difficult for member states to prove which is the member state of first entry of the asylum seeker.

Member states at the EU's external border have failed to systematically register asylum seekers arriving in the EU and maintain the minimum asylum standard on their territory. There is abundant literature that blames mainly Greece and Italy for their non-compliance with these duties (see for instance Den Heijer et al. (2016, p.608-615), Thym (2016, p.1550-1551) Costello and Mouzourakis (2017, p.283-286)). Although there is of course the possibility that these member states were simply unable to comply, this literature also highlights that these member states have a strong incentive not to comply. The European Commission labelled the non-compliance by member states at the EU's external border as the **wave-through approach**.⁷⁶

Member states at the EU's external border have an interest to sabotage the transfer system because it enables them to shift the responsibility for asylum seekers to other member states. If member states at the EU's external border would not do this, then they would simply face overburdened asylum systems. Costello and Mouzourakis (2017, p.285) illustrate this in a striking way by indicating that if the Dublin system had functioned properly in 2015, Greece would have had to examine 900.000 asylum claims. The non-correct application of the Dublin system enables member states at the EU's external border that are popular points of entry to provide some relief to their asylum systems (Den Heijer et al., 2016, p.612; Trauner, 2016, p.321; Thym, p.1550).

Member states at the EU's external border might also not be able to comply with their responsibilities. Den Heijer et al. (2016, p.616) observe that it is an impossibility to perfectly administer the EU's external border so that every asylum applicant is either registered or returned. Thym (2016, p.1551-1552) nuances this observation by stating that although border management will not be able to detect all asylum seekers that try to sneak into the EU, it will be able to reduce the number that is able to

⁷⁶ European Council Meeting (18 and 19 February 2016), EUCO doc. 1/16, at 8(d)., see p.4; European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, Com (2016) 120 final, 04.03.2016, see p.2 and 7-9.

access the EU without being undetected. Thym (2016, p.1551-1552) finds two other reasons why member states at the EU's external border were not able to operate an effective external border and asylum system during the 2015/2016 EU Asylum Crisis. Firstly, these member states at the EU's external border do not have much experience with hosting a large number of asylum seekers (p.1551). Secondly, during the 2015/2016 EU Asylum Crisis even a member state like Germany, which traditionally has more experience with hosting refugees, had problems in providing good asylum conditions to all asylum seekers (p.1552).

4.2.3. The absence of EU enforcement

The Dublin transfer system was not operational during the 2015/2016 EU Asylum Crisis because member states at the EU's external border failed to comply with their external border and asylum responsibilities. This raises the question of whether and why there was no enforcement. The problem is that although there are enforcement mechanisms available, key players do not have an interest in activating them (Den Heijer et al., 2016, p.614-615; Thym, 2016, p.1555). Under EU law there are two main enforcement mechanisms: enforcement by individuals through national courts and enforcement by the European Commission as the Guardian of the Treaties.

The individuals in this context are the asylum seekers or refugees that in front of a national court would need to claim that a member state refused to register them or did not treat them according to the EU minimum asylum standard. Thym (2016, p.1555) uses a striking example why this did not happen. He asks himself why an asylum seeker who wishes to apply for asylum in Sweden would file a complaint against Hungarian authorities that the Hungarian officials failed to register him or that he is not treated according to the minimum EU asylum standard in Hungary. Instead, the asylum seeker would prefer to move to Sweden and not reveal that Hungary is his member state of first entry or, if Hungary registered him, claim in front of a Swedish court that Hungary fails to treat asylum seekers in a way that corresponds with the minimum EU asylum standard (see also Den Heijer et al. (2016, p.614)). From this perspective, it can be argued that the court rulings *M.S.S. vs Belgium and Greece* and *Tarakhel vs. Switzerland* and *dealy* to have an undesirable effect in the sense that they marginalised the role of enforcement of EU asylum law by individuals.⁷⁷

Given that individuals do not undertake action if member states at the EU's external border do not comply with their responsibilities, it means that the European Commission would need to undertake

⁷⁷ Recall that these court rulings provided asylum seekers with the opportunity to complain about their asylum treatment in other member states than the member state that according to the Dublin criteria should host them. If the national court of another member states would find that their claim is valid, then these asylum seekers would be rewarded by being allowed to stay in this other member state. For more detail see section 3.3. of this chapter.

a more active role in enforcement. Despite the fact that the European Commission scaled up the number of launched infringement procedures it pursued since the harmful events during the 2015/2016 EU Asylum Crisis, it still pursues them half-heartedly (Thym, 2016, p.1555). Schmälter (2018) provides an analysis of the actions undertaken by the European Commission to address member states' non-compliance with their duties under EU asylum law. She finds that the European Commission preferred to use capability enhancing measures instead of willingness enhancing measures to address non-compliance by the member states at the EU's external border (p.1345-1346).⁷⁸ Her explanation is that asylum issues are sensitive for member states. This sensitivity keeps the European Commission from using infringement procedures because the European Commission is also dependent on the member states against whom it would need to launch infringement procedures for the adoption of new EU legislation. Especially for sensitive topics, member states might be willing to retaliate against the European Commission by voting against new legislation.⁷⁹

5. EU asylum policy in the aftermath of the 2015/2016 EU Asylum Crisis

The EU launched two programs with respect to migration and asylum management in the aftermath of the 2015 EU Asylum Crisis: the EU Agenda on Migration (2015-2020) and the New Pact on Migration and Asylum (2020-...). In this section, I will shortly outline that these two programs do not fundamentally change the EU's approach towards asylum.

5.1. The EU Agenda on Migration (2015-2020)

5.1.1. The four pillar approach

The large number of drownings in the Central Mediterranean and the large number of secondary movements during the 2015/2016 EU Asylum Crisis put the malfunctioning EU asylum regime on the policy agenda. The Agenda⁸⁰ (announced in May 2015) initially focused on addressing the irregular

⁷⁸ Schmälter (2018) studies the choice of instruments by the European Commission to improve a member state's compliance with EU law. Building on the work by Tallberg (2002, p.614-620) and Hartlapp (2007) she distinguishes between capability enhancing measures (e.g. financial assistance, operational assistance by EU agencies) and willingness enhancing measures (e.g. launching infringement procedures, publicly naming and shaming a member state).

⁷⁹ Steunenber (2010) models the decision of the European Commission to launch an infringement procedure against a member state if this member state wrongly implemented EU legislation. The leaving point from his model is that the European Commission has its own preferences. These preferences do not necessarily align with the goal that member states comply with EU asylum law. He provides two factors that influence the European Commission's willingness to enforce EU law. Firstly, if the preferences of the European Commission are strongly in favour of a member state's compliance, then the European Commission will be more inclined to launch an infringement procedure in the case that a member state does not comply with EU law (p.373). Secondly, transaction costs might limit the willingness of the European Commission to use infringement procedures (p.371-372). The retaliation in the main text is an example of these transaction costs.

⁸⁰ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, A European Agenda on Migration, COM (2015) 240 final, 13.05.2015.

crossing of the Mediterranean while later it also aimed to address the irregular secondary movements throughout the EU. The Agenda aims to address the structural problems of EU migration policy by using a **comprehensive approach** based on **four pillars**:

- 1) Reducing incentives for irregular migration (towards and into the EU).
- 2) Border management saving lives and securing external borders.
- 3) A strong Common Asylum Policy.
- 4) A new policy on regular migration.

In order to implement the Agenda the EU adopted a set of policies. I will provide an overview of these policies in chapter 3 of this dissertation.

5.1.2. Continuation of a system based on coercion and prohibition

The Agenda provides an overarching framework of EU migration policy. I focus on the impact of this framework on overall EU asylum policy (both external and internal). It clearly continues on the prohibition and the coercion approach. The continuation of the prohibition approach follows from two factors. Firstly, the fourth pillar creates new legal avenues for asylum seekers to reach the EU in a regular manner for the purpose of asylum (for instance by means of the resettlement of refugees from crisis areas or the provision of humanitarian visas to asylum seekers who still find themselves in a vulnerable position in their region of origin). Secondly, the first pillar focuses on addressing irregular migration towards the EU. It indicates that the Agenda in practice aims at ensuring that asylum seekers are not able to reach the EU's external border. The continuation from the coercion approach follows from that the Dublin system is maintained in the third pillar. The focus of this pillar is to correctly apply the rules from the CEAS. It should be mentioned that the European Commission in its communication in which it announces the Agenda in May 2015 states that it plans to review the Dublin system and if necessary revise it. In May 2016 the European Commission proposed to replace the Dublin system with some minor changes however (a so-called Dublin IV proposal).⁸¹ The Dublin criteria remain largely operational but the new system has a corrective mechanism to avoid member states from becoming overburdened (Maiani, 2017, p.629-630). If a member state has to host a disproportional number of asylum seekers, then the corrective mechanism is automatically triggered. At the moment of writing this dissertation the proposal has not replaced the Dublin III Regulation yet.

⁸¹ See Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL: establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (04/05/2016).

5.2. The New Pact on Migration and Asylum (2020 -...)

5.2.1. No fundamental changes: still a system based on coercion and prohibition

The New Pact presents the view of the new European Commission on migration and asylum affairs. Although the president of the European Commission presents the new pact as a fresh start because the old system is not any longer working⁸², this new pact does not fundamentally change the structure of the EU asylum policy. It still builds strongly on the dual idea of coercion and prohibition and aims, similar to the EU Agenda on Migration, to pursue a comprehensive approach to asylum and migration management.⁸³

With respect to external asylum policy, the New Pact aims to avoid irregular migration towards and into the EU. This is to be done by means of mutually-beneficial partnerships with third countries. This cooperation includes the creation of legal pathways for people in need of international protection to access the EU, addressing the root causes of irregular migration and assisting third countries that need to host large numbers of people in need of international protection.⁸⁴ This closely connects to the earlier described prohibition approach of EU asylum policy.

With respect to internal asylum policy, the New Pact replaces the Dublin III Regulation for a new EU asylum allocation system. This proposed new system still builds strongly on the Dublin system however.⁸⁵ It adds a solidarity mechanism for the case in which a member state finds itself under migratory pressure.⁸⁶ According to Maiani (2020) the proposal is “for all intents and purposes an amended version of the Dublin III Regulation, and most of the amendments are lifted from the 2016 Dublin IV Proposal.” Carrera (2020, p.6-7) provides a basic understanding of the functioning of the solidarity mechanism. In a nutshell, the solidarity mechanism is enacted if the European Commission finds that a member state is under migratory pressure. The solidarity mechanism consist of an initial phase in which the other member states can voluntarily submit plans on how they want to provide relief to the member under the migratory pressure. If the total contribution of all member states does

⁸² See https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1727 (accessed on 21/07/2021)

⁸³ Article 3 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Asylum and Migration Management (23/09/2020).

⁸⁴ Article 3(a) of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Asylum and Migration Management (23/09/2020).

⁸⁵ Part III (article 8 to 44) of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Asylum and Migration Management (23/09/2020) deals with the criteria and mechanisms for determining the member state that is responsible to host an asylum seeker. Article 14 to 23 provide the criteria that determine which member state needs to host an asylum seeker. These criteria follow a very similar structure as under the Dublin III Regulation.

⁸⁶ Part IV (article 45 to 61) of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Asylum and Migration Management (23/09/2020) deal with the solidarity mechanism.

not meet what the European Commission deems necessary, then the Commission can adapt the voluntary contributions so that the member state under stress receives the necessary relief.

Chapter 3

The need for and the limitations of an operational Dublin transfer system as a solution for the Schengen Crisis

1. Introduction

Approximately 30 years ago some EU member states decided in the Schengen Agreement to abolish internal borders between them. In the following years an increasing number of member states decided to join the Agreement and since 1997 it has been incorporated in the EU legal framework. Currently, all EU member states, except for Great Britain and Ireland, joined the Schengen Area or are obliged to do so in the coming years. The Schengen Agreement facilitates the possibility to reinstate internal border controls again in the form of escape clauses in cases of "a serious threat to internal security or public policy". For years these escape clauses have only been used to a limited extent and, if used, only for a short duration (Ceccorulli, 2019, p.305). This changed however during the 2015/2016 EU Asylum Crisis when a significant number of member states closed their internal borders for a longer duration.

Member states justified the closures of their internal borders by arguing that it was a necessary measure to protect their societies from the large number of TCNs that engaged in secondary movements (Carrera et al., 2018, p.11-15). As I explained in chapter 2 of this dissertation, most of the TCNs that during this crisis engaged in these secondary movements were asylum seekers fleeing conflict in their state of origin (see also Fargues (2015)). These asylum seekers were encouraged to do this due to the fact that member states at the EU's external border had engaged in the so-called wave-through policies. These wave-through policies (among others) consisted for instance of failing to comply with their responsibilities under EU law by not registering arriving asylum seekers and not maintaining the minimum asylum standard on their territory. In this way, they effectively sabotaged the Dublin transfer system. It provided asylum seekers with the opportunity to apply for asylum in their favourite member state with a low risk of being transferred back to their member state of first arrival (and in this way facilitated thus asylum shopping).⁸⁷ With the goal to restore the borderless Schengen Area, the European Commission launched in 2016 the program: "*Back to Schengen – a Roadmap*".⁸⁸ Non-surprisingly one of the prime goals of this program is to stop the adopted wave-

⁸⁷ For more detail see subsection 4.2. of chapter 2.

⁸⁸ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, *Back to Schengen – A Roadmap*, Com (2016) 120 final, 04.03.2016.

through approach by member states at the EU's external border and to ensure that they comply with their responsibilities under EU law. This would rehabilitate the Dublin transfer system which implies that asylum seekers who engage in secondary movements can (more easily) be transferred back to their member state of first arrival.

Although it is not likely to be a simple task for the European Commission to make member states at the EU's external border comply with their responsibilities under EU law (given their strong interest of encouraging asylum seekers to engage in secondary movements), I will in this chapter assume that the European Commission manages to successfully do this. The goal of this chapter is to evaluate to what extent a rehabilitated or operational⁸⁹ Dublin transfer system really offers a solution for the Schengen Crisis. In order to answer this question it is important to understand what an operational transfer system does. In simple terms, it provides destination and transit member states with the option to return asylum seekers that engage in secondary movements back to their member state of first arrival (I will refer to these transit and destination member states as member states of non-first entry).⁹⁰ It means that popular member states of non-first entry have an alternative to the use of internal border controls to control the number of asylum seekers on their territory. For the question of the extent to which an operational Dublin transfer system is able to contribute to a borderless Schengen Area, it is therefore important to analyse under the conditions under which member states of non-first entry would be willing to exclusively rely on the Dublin transfer system and refrain from the adoption of internal border controls to deal with asylum seekers' secondary movements.

This analysis will help me to answer the first research question of my dissertation: *"What are the obstacles of the choice to maintain the Dublin system for the quest to avoid future EU asylum crises?"* As I explained in chapter 2, the fact that during the 2015/2016 EU Asylum Crisis the Dublin transfer system was not operational has been singled out as one of the main sources of the secondary movements that led to the Schengen Crisis. From this perspective, it seems understandable that the focus in the Roadmaps on addressing these wave-through policies. However, this neglects the question of whether, if the Dublin transfer system had been operational and member states of non-first entry could have used the Dublin transfer system instead of the adoption of internal border controls to deal with asylum seekers' secondary movements, these member states of non-first entry

⁸⁹ With a rehabilitated or operational Dublin transfer system I mean that member states are in the position to transfer asylum seekers back to the member state that under the Dublin criteria should be responsible to host them. This requires that asylum seekers are registered upon arrival and the minimum asylum standard is maintained in all member states (see subsection 3.3. of chapter 2 for more detail).

⁹⁰ Destination member states of secondary movements are the member states that the asylum seekers want to reach with these movements. Transit member states of secondary movements are member states that asylum seekers need to cross in order to reach their destination member state. An example of a destination member state during the 2015/2016 EU Asylum Crisis would be Germany and of a transit member state Hungary.

would automatically have done so. If this is not the case, then further supporting policies next to an operational Dublin transfer system might be needed to guarantee that asylum seekers do not any longer pose a threat to the borderless Schengen Area.

2. “Back to Schengen – a Roadmap”

2.1. The EU’s plan of action to reinstate a borderless Schengen Area

The focus of the Agenda increasingly shifted from saving migrants to preserving the Schengen Area after the first EU member states reinstated internal border controls in September 2015 (as a response on the substantial number of TCNs that engaged in secondary movements throughout the EU). These internal border controls remained moreover in place for a longer period (see in this context Ceccorulli (2019, p.306-311)). The European Commission states in the document *“Back to Schengen – a Roadmap”* that a European Union with internal borders controls harms the functioning of the Schengen Area and that it is therefore of paramount importance to restore the Schengen Area without controls at internal borders.⁹¹ For this reason, it calls for several points of action in order to restore the borderless Schengen Area. I classify these points of actions into three categories:

1. Stopping the ~~wave~~ *wave-through approach (targets member states at the EU’s external border)*.⁹²

The European Commission adopts a view that the secondary movements of TCNs are strongly connected to the wave-through approach that has been adopted by member states at the EU’s external border. Since these secondary movements were the cause of the closure of the internal borders, the European Commission argues strongly in favour of policies that stop the wave-through approach. According to the European Commission stopping the wave-through approach requires that member states comply with their responsibilities under EU Law. This requires that member states should:

- a) Ensure proper external border management for their part of the EU’s external border.
- b) Register arriving asylum seekers.
- c) Host asylum seekers in a way that meets the minimum EU asylum standard.

Condition a) provides that only TCNs who meet the EU’s entry criteria can enter the EU while conditions b) and c) restore the non-operational Dublin transfer system. The latter provides member states of non-first entry with the option to return asylum seekers to the member state in which they should be hosted according to the Dublin criteria.

⁹¹ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, Com (2016) 120 final, 04.03.2016., see p.2.

⁹² European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, Com (2016) 120 final, 04.03.2016., see p.7-9.

2. *Reducing the number of arrivals of TCNs at the EU's external border.*⁹³

If fewer asylum seekers arrive at the EU's external border, it is less likely that member states at the EU's external border will become overburdened.

3. More coordinated internal border management (targets member states that closed their internal borders⁹⁴).

A coordinated internal border management approach ensures that member states only close their internal borders as a tool of last resort.

2.2. The execution of the plan of action

A closer look at the actual policies that the EU pursued in the aftermath of the 2015 EU Asylum Crisis shows the extent to which the EU put its plan of action into practice. Niemann and Zaun (2018, p.5-13) list the following main policies that have been pursued:

1. The creation of hotspots

The EU deployed support teams at several "hotspots" at the EU's external border in Italy and Greece. The aim is to boost asylum and external border systems at the external border of the Schengen Area. It does so by assisting the member states at the EU's external border to register (fingerprint) arriving asylum seekers and to maintain the minimum EU asylum standard on their territory.

2. The relocation of asylum seekers from the main member states of first entry

The EU decided to reallocate 160.000 asylum seekers from Greece and Italy to other member states based on a certain distribution key in order to remedy the unequal distribution of asylum responsibilities under the Dublin system.

3. The resettlement of asylum seekers from their state of origin

The EU decided to resettle 22.504 persons from outside the EU in order to avoid that persons in need of refugee protection needed to undertake dangerous journeys to reach the EU.

4. Increased capacity and mandate of the European Coast and Border Guard

The capacity and mandate of the European Coast and Border Guard has been strengthened. It now regularly undertakes vulnerability assessments at the EU's external borders and reports on this. In the case that it reports that there are deficiencies at the EU's external border, then the member state that possesses this part of the EU's external border ought to fix them. If the member state fails to do so, the European Coast and Border Guard then has the right to

⁹³ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, Com (2016) 120 final, 04.03.2016., see p.3.

⁹⁴ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, Com (2016) 120 final, 04.03.2016., see p.9-11.

intervene. The member state that possesses the external EU border remains the primary actor responsible to ensure that its part of the EU's external border is managed in a way that corresponds with EU law, however.

5. Collaboration with third countries

The EU increasingly started to collaborate with third countries in order to pursue two main goals. Firstly, in order to facilitate the readmission of asylum seekers with unfounded asylum claims. Secondly, to incentivise and assist third countries to stop asylum seekers who want to come to the EU. The EU increasingly uses the instrument of conditionality in order to convince third states to participate in these agreements (for example by rewarding third states for their cooperation by providing access to regional development funds). The EU has closed several deals with the aim of achieving these two goals in the aftermath of the 2015/2016 EU Asylum Crisis. The most notable is the EU-Turkey deal in 2016 but new deals have also been closed with Ethiopia, Mali, Niger, Nigeria and Senegal.⁹⁵

6. Creation of a list of safe countries of origin

The EU defined some safe countries of origins with the aim to accelerate asylum applications.

The states on this lists are mainly states on the European continent.

2.2.1. Goal 1: Stopping the wave-through approach (and mending the Dublin transfer system)

A first set of policies deals with addressing the wave-through policies that have been pursued by member states at the EU's external border. These policies aim at ensuring that member states at the EU's external border prevent TCNs from entering their territory in an irregular manner, register arriving asylum seekers and maintain the minimum asylum standards on their territory. This is done by means of two types of policies. Firstly, the European Commission adopted policies that focus on directly assisting member states at the EU's external border to comply with their responsibilities under EU law. The hotspots approach and the increased capacity and mandate of Frontex are examples of this. Secondly, the European Commission used policies that make it easier for member states at the EU's external border to comply with their responsibilities under EU law. The safe third country list (by accelerating the asylum procedure) and the new readmission agreements (by making it easier to return asylum seekers with unfounded claims) are examples of this. The relocation scheme aims at

⁹⁵ The new deals with these African countries are closed in the context of the new migration partnership framework in order to manage migration in a way that creates a win-win situation for both the EU member states and the third state.

See: https://eeas.europa.eu/sites/eeas/files/factsheet_ec_format_migration_partnership_framework_update_2.pdf (accessed on 06-08-2021).

offering some relief for the key member states at the external border by reducing the number of asylum seekers that these member states need to host.

2.2.2. Goal 2: Reducing the number of asylum seekers that are able to reach the EU

A second set of policies focuses on reducing the number of asylum seekers arriving at the EU's external border. By voluntarily resettling some asylum seekers from crisis areas these people will not need to risk the dangerous journey towards the EU. By actively collaborating with third countries the EU encourages countries outside of the EU to stop asylum seekers before they are able to reach the EU.

2.2.3. The lack of action on internal border management

Escape Clauses: the possibility to temporarily close internal borders

Under the Schengen legislation it is permissible for member states to temporarily close their internal borders.⁹⁶ The general requirements for temporarily closing internal borders are that there must be a serious threat to public policy or internal security and that the closure is a tool of last resort.⁹⁷ There are three different grounds for temporarily closing internal borders. With respect to the first two the member states have a greater degree of discretion since the allowed duration of the closure of the internal borders is shorter.

1. The case where a member state can foresee a serious threat to public policy or internal security.⁹⁸ On this basis it is possible to close borders for up to 6 months.⁹⁹ The member state needs to send a notification to the European Commission.
2. The case of an immediate action.¹⁰⁰ On this basis it is possible to close internal borders for up to two months.¹⁰¹ The member state needs to send a notification to the European Commission.
3. The case of exceptional circumstances where the overall functioning of the Schengen Area is at risk.¹⁰² With respect to this basis, member states have less discretion and need a recommendation from the European Council before they are allowed to close their internal borders. This recommendation is based on information the European Council receives from member states and the European Commission.¹⁰³ An evaluation report from the European Commission which concludes that there are serious deficiencies in a member state with external EU borders and that this member state is neglecting its obligations is a necessary

⁹⁶ See articles 25-35 of the Schengen Borders Code (REGULATION (EU) 2016/399).

⁹⁷ See article 25(1 and 2) of the Schengen Borders Code (REGULATION (EU) 2016/399).

⁹⁸ See article 27 of the Schengen Borders Code (REGULATION (EU) 2016/399).

⁹⁹ See article 25(4) of the Schengen Borders Code (REGULATION (EU) 2016/399).

¹⁰⁰ See article 28 of the Schengen Borders Code (REGULATION (EU) 2016/399).

¹⁰¹ See article 28(4) of the Schengen Borders Code (REGULATION (EU) 2016/399).

¹⁰² See article 29 of the Schengen Borders Code (REGULATION (EU) 2016/399).

¹⁰³ See article 30(1 and 2) of the Schengen Borders Code (REGULATION (EU) 2016/399).

requirement before the European Council can give such a recommendation.¹⁰⁴ A recommendation can be given for a maximum of 6 months and can be prolonged three times up to a maximum of 2 years.¹⁰⁵

The 2015/2016 EU Asylum Crisis and the use of the escape clauses

During the 2015/2016 EU Asylum Crisis some Schengen member states decided to use one or more of the escape clause options. As Guild et al. (2016, p.51-54) notice member states initially used the first two grounds but around the summer of 2016 most member states had finished their total of 8 months and wanted to extend this period. As a result, they needed the third ground. In 2016 the European Commission found significant deficiencies in the Greek external borders and on the 4th of May it sent a proposal to the European Council to allow Austria, Germany, Denmark, Sweden and Norway to temporarily close some of their internal borders with other member states.¹⁰⁶ The European Council accepted this proposal¹⁰⁷ and, as such, these member states were allowed to close these internal borders for 6 months. Afterwards the EU Council extended the recommendation three times.¹⁰⁸ Although with three extensions the maximum number of extensions has been reached, Carrera et al. (2018, p.12) notice that it did not prevent the same five member states from using the same justification for closing their internal borders. As a consequence, to the contrary of what Guild et al. (2016, p.9) only call a violation of the spirit of the Schengen Borders Code, this would be a violation of the Schengen Border Code itself.

France also reinstated internal border controls but did this repeatedly on the basis of the first ground arguing that all the time there was a renewed terrorist threat. The legality of this justification has been questioned however because this ground can only be used to address “new” threats and not “renewed” threats (Platon, 2018). However, independent of whether it is legally possible to keep internal borders closed due to the temporal restrictions in the Schengen Borders Code, Carrera et al. (2018, p. 48-49) criticise the EU institutions for taking a too passive role in assessing whether the

¹⁰⁴ See article 21(3) of the Schengen Borders Code (REGULATION (EU) 2016/399).

¹⁰⁵ See article 29(1) of the Schengen Borders Code (REGULATION (EU) 2016/399).

¹⁰⁶ European Commission, Proposal for a Council Implementing Decision setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen Area at risk, COM(2016) 275 final, 04.05.2016.

¹⁰⁷ Council of the EU, Council Implementing Decision (EU) 2016/894 setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen Area at risk, 12.05.2016.

¹⁰⁸ Council of the EU, Council Implementing Decision (EU) 2016/1989 setting out a recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen Area at risk, 11.11.2016; Council of the EU, Council Implementing Decision (EU) 2017/246 setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen Area at risk, 07.02.2017; Council of the EU, Council Implementing Decision (EU) 2017/818 setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen Area at risk, 11.05.2017.

current border checks are proportional and meet the tool of last resort criterion. The consequence was that member states could unilaterally choose whether to close their internal border or not. It shows a lack of action on the side of the European Commission with respect to the goal to establish more coordinated internal border management such that internal border controls are only used as a tool of last resort.

3. Restoring Schengen: The neglected role of member states of non-first entry?

Wave-through policies pursued by member states at the EU's external border encouraged asylum seekers to engage in secondary movements during the 2015/2016 EU Asylum Crisis as it provided asylum seekers with the opportunity to file an asylum claim in their favourite member state with a low risk of being returned to their member state of first arrival. The question is whether the approach chosen by the European Commission in its program "*Back to Schengen – a Roadmap*" to target these wave-through policies and, in this way, restore the Dublin transfer system is sufficient to ensure that asylum seekers will not any longer pose a threat to the borderless Schengen Area.

3.1. An operational transfer system and a borderless Schengen: when does it work?

I will draw on a framework as provided by Orrenius and Zavodny (2015, p.671-675) in order to evaluate the extent to which an operational transfer system is able to convince member states of non-first entry to keep their internal borders open if, similar to the situation during the 2015/2016 EU Asylum Crisis, a large number of asylum seekers wish to reside on their territory. This framework is based on the fact that a state can use (a combination of) two types of policies to control the number of irregular migrants¹⁰⁹ on its territory: border and interior enforcement tools. After the Dublin transfer system becomes operational member states of non-first entry basically have the availability to use both border and interior enforcement tools to deal with asylum seekers that want to engage in a secondary movement into their territory.

3.1.1. Two types of enforcement tools: border enforcement versus interior enforcement

Border enforcement includes policies related to the protection of borders in order to prevent irregular migrants from gaining access to the territory of the state while interior enforcement comprises of policies that aim to expel irregular migrants that are already present on the territory of the state. Importantly interior policies can take place in various forms and do not only include policies related to using the police force to apprehend irregular migrants (Orrenius and Zavodny, 2016, p.12-13).

¹⁰⁹ Since asylum seekers under EU law should adhere to the Dublin system and not engage in secondary movements, I follow the view that asylum seekers' secondary movements can be seen as a form of irregular migration.

Another form of interior border enforcement is for example that employers are required to check the legal status of a person before they can hire him.

Both types of policies influence the number of migrants on the territory of the state through two channels. Firstly, the policies deter migrants to come to the state's territory by making it more difficult or more costly. In theory, both tools are equally able to deter irregular migration by reducing the expected return of irregular migration. Before migrating potential irregular migrants weigh the expected benefits and expected costs of undertaking this journey. If the balance of this trade-off is negative, then this person is effectively deterred. This can be portrayed as follows:

$$R = p \cdot B - C \quad (1)$$

R is the expected return of irregular migration. p reflects the probability that irregular migration is successful, B the benefits of successful irregular migration and C the costs of irregular migration. Border enforcement influences the expected return of irregular migration by either reducing the probability of success or increasing the costs of irregular migration. The reason is that potential irregular migrants will re-evaluate the optimal route for undertaking the journey, which means that they might undertake more dangerous journeys in order to keep the probability of success stable (see in this context Gathmann (2008)). Interior enforcement policies that involve a greater police force to apprehend irregular migrants have the same effect as effective border enforcement policies. In contrast, interior enforcement policies that for example restrict the access of irregular migrants to the regular labour market of the state negatively influence the expected benefits of a successful irregular migration journey because it cuts these irregular migrants off from this labour market.

Secondly, despite the adoption of these policies it might be the case that asylum seekers are not deterred. In the case that asylum seekers nevertheless still choose to engage in irregular migration, the policies also influence the number of irregular migrants that can successfully engage in irregular migration into the country by enforcing the migration laws. Border enforcement policies prevent that part of the migrants, who nevertheless try to reside with an irregular status in the state, from entering the state. Interior enforcement policies prevent that part of the migrants, who nevertheless have entered, from effectively staying with an irregular status in the state by returning them.

3.1.2. Back to Schengen: the need for the exclusive use of interior border enforcement tools

A rational member state will adopt the set of enforcement policies that manages the number of irregular migrants on its territory in the most cost-effective way. Although both border, and interior enforcement policies are theoretically able to deal with irregular migration, they might differ in their cost-effectiveness to stem irregular migration flows. The cost-effectiveness of individual policies will moreover depend on the time, place and interaction with other enforcement policies. For this reason,

a rational member state will undertake a comparative approach and evaluate the extent to which different combinations of enforcement policies are expected to reduce irregular migration and how much the enactment of these combinations of policies will cost. The outcome might also be a combination of border, and interior enforcement policies. Applying the choice of enforcement tools on the goal of the EU's program "*Back to Schengen – a Roadmap*" means that member states of non-first entry should exclusively rely on interior enforcement policies if they want to prevent asylum seekers from successfully engaging in a secondary movement into their territory. In other words, an operational Dublin transfer system ensures a borderless Schengen Area if member states of non-first entry do not any longer want to use border enforcement policies in order to deal with asylum seekers' secondary movements.

3.2. Two motives for secondary movements

In order to be able to assess whether an operational transfer system ensures that asylum seekers' secondary movements will not any longer pose a threat for the borderless Schengen Area, it is necessary to discuss that asylum seekers might have two different motives to engage in secondary movements. In this context, it is moreover important to distinguish between two types of asylum seekers: asylum seekers that hold strong asylum claims and asylum seekers that hold weak asylum claims. The difference between the two categories is that asylum seekers belonging to the former category have a high probability of being accepted as refugees while asylum seekers belonging to the latter have a low probability. The scholarship that provides explanations for the large-scale secondary movements during the 2015/2016 EU Asylum Crisis seems exclusively to focus on the asylum seekers with strong claims.¹¹⁰ This might also be understandable because during the 2015/2016 EU Asylum Crisis it was primarily people fleeing conflict that entered the EU and moved onward (Fargues, 2015, p.3). For our analysis, it will however be necessary to focus on asylum seekers with weak claims because if the European Commission's policies, that aim to construct a more effective external border management, are successful, it is a possibility that there are people who might (ab)use the EU asylum system by applying for asylum at the EU's external border while they know that in fact the probability is low that they will be accepted as refugees. By entering the asylum procedure of the member state at the EU's external border they hope to be granted access to the EU and they will likely abscond from the EU asylum procedure as soon as they have the opportunity. Secondary movements by asylum seekers with weak claims might thus increasingly become a problem for the borderless Schengen Area. The two categories of asylum seekers might potentially have two motives to engage in secondary movements: asylum shopping (as frequently discussed in the literature) and moving into irregularity.

¹¹⁰ See subsection 4.2. of chapter 2.

3.2.1. Motive 1: asylum shopping¹¹¹

The first motive for asylum seekers to ignore the Dublin system and engage in a secondary movement is to influence which member state they are legally hosted in. Mainly asylum seekers with strong claims might be interested in this option. During the 2015/2016 EU Asylum Crisis many asylum seekers did not stay in their member states of first arrival (Greece and Italy) but instead moved to their favourite member states (Germany and Sweden) with the aim of applying for asylum there.

3.2.2. Motive 2: the move into irregularity

A second option for asylum seekers to ignore the Dublin system and engage in a secondary movement is to reside in an irregular manner in another member state than their member state of first arrival (i.e. they do not come for the purpose of receiving asylum in this member state). Obviously asylum seekers with weak asylum claims are most likely to choose this option. However it might also be an attractive option for asylum seekers with strong claims in the situation where asylum shopping is an impossibility. In order to understand this, it is important to briefly review the concept of a **categorical substitution effect** (see Czaika and de Haas (2013, p.497) and De Haas et al. (2019, p.908-909). De Haas et al. (2019) state that categorical substitution effects might occur “*when entry through one particular channel becomes more difficult and migrants reorient towards other regularized – channels*”.¹¹² The idea is simple: (some of the) asylum seekers, who previously might engage in a secondary movement in order to be hosted in a regular manner in their favourite member state, might consider instead staying with an irregular status in the territory of this same member state if it becomes more difficult to stay with a regular status there.¹¹³

To see whether it is potentially an attractive option for future asylum seekers with strong claims to leave their member state of first entry for the purpose of residing with an irregular status in another member state, I will use a hypothetical experiment that in the coming years a similar number of Syrians

¹¹¹ See section 4.2. of chapter 2 for a more elaborate description.

¹¹² In the context of a set of European countries, Czaika and Hobolth (2016) find for example that if a state increases the number of asylum rejections with 10% this is associated with an increase of 3% in the number of unauthorised migrants present on the territory of the state.

¹¹³ Asylum seekers evaluate from a rational choice perspective the expected utility levels of residing on a regular status in their member state of first arrival, residing on a regular status in a different member state or residing with an irregular status in a different member state. The asylum seekers that during the 2015/2016 EU Asylum Crisis decided to engage in a secondary movement for the purpose of asylum shopping apparently calculated that the expected utility level of residing on a regular status in another member state yielded the highest level of expected utility. If asylum shopping becomes more difficult, then these asylum seekers might re-evaluate what gives them the highest level of expected utility. It might be the case that they will now decide to adhere to the EU mobility rules by staying in their member state of first arrival but it might also be that they will continue to engage in secondary movements for the purpose of residing with an irregular status in a different member state than their member state of first arrival.

again arrive to the EU as they did in 2015 and 2016 (approximately 700.000¹¹⁴) and all of them enter the EU through Greece (currently there are more than 3.500.000 refugees in Turkey¹¹⁵). According to the literature, which studies why migrants engage in irregular migration, there are two main factors that explain why people are interested in leaving their country of origin and moving into irregularity in another member state: good labour market opportunities (in the black market) and the presence of social networks (Orrenius and Zavodny, 2015, p.965). Since Greece struggles to provide good labour market opportunities to recognised refugees¹¹⁶ and social welfare benefits are low¹¹⁷, newly arrived Syrian asylum seekers do not have prosperous prospects by staying in Greece. If another member state can offer good labour opportunities in the black market and / or these asylum seekers have a social network in this other member state, then these refugees might thus be willing to consider moving to this other member state in order to reside with an irregular status there.

Since most asylum seekers that arrived in the EU in 2015 and 2016 currently reside in Germany by engaging in asylum shopping, I will look at whether newly arrived Syrian refugees might still be inclined to move to Germany but now with the motive of residing with an irregular status there. As a consequence of the large number of Syrians that currently reside in Germany, there is a good chance that newly arrived asylum seekers will have a social network in Germany. In figure 2, I provide furthermore the number of people employed in the illegal sector in 2017 by member state to see whether there might be labour opportunities in the black market in Germany. The figure shows that in 2017 approximately 2.4 million people work in the irregular sector in Germany. Although this number does not include information on the demand for new labourers in the black labour market in Germany, it provides an indication that it does since the size of this black labour market seems to be significant. In sum, due to the combination of existing social networks and the availability of black labour market opportunities it is not unthinkable that (some of) these newly arrived Syrian refugees might prefer to live in Germany with an irregular status rather than living in Greece on a regular status.

¹¹⁴ According to Eurostat 359.925 Syrians applied for asylum in the EU in 2015 and 333.245 in 2016. (Eurostat, "Asylum and first time asylum applicants by citizenship, age and sex - annual aggregated data (rounded)" (online data code: MIGR_ASYAPPCTZA, applicant type: first time applicant) (accessed on 18-06-2021)).

¹¹⁵ According to the UNHCR 3.675.485 Syrians reside in Turkey in 2021.

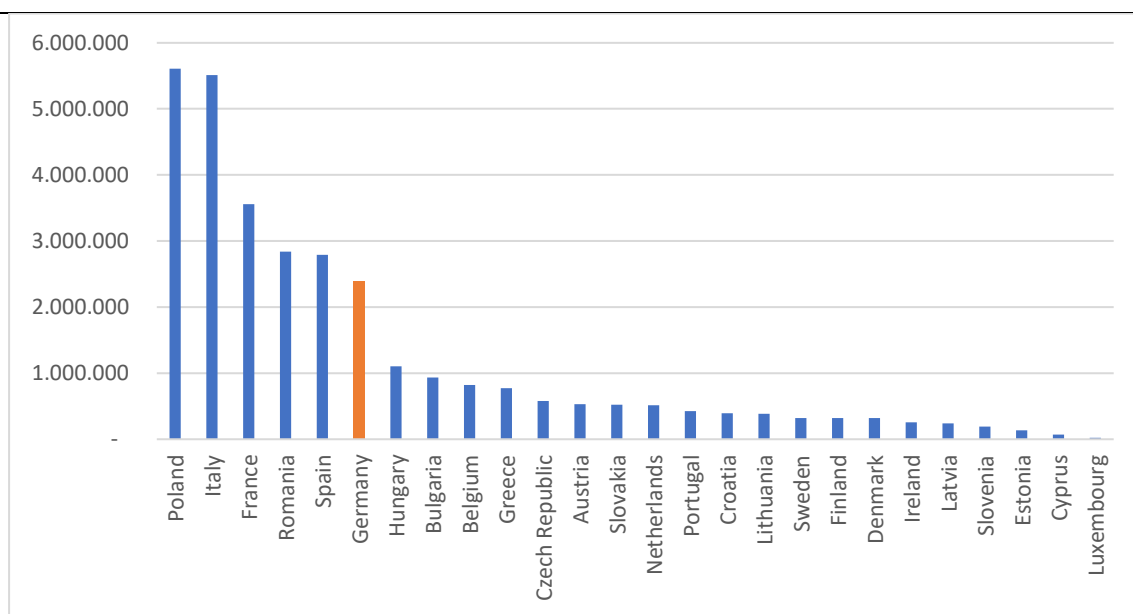
See: <http://data2.unhcr.org/en/situations/syria> (accessed on 12-06-2021)

¹¹⁶ The UNCHR (2018, p.9) reports that refugees in Greece face great difficulty to access the labour market as a result of among others a lack of information, high unemployment rates, a lack of documentation and language barriers.

¹¹⁷ According to the website of the European Council on Refugee and Exiles refugees in Greece formally have access to social welfare benefits but in many cases refugees face administrative difficulties so that in practice they do not receive benefits. If refugees manage to receive the benefits the main source stems from Social Solidarity Income (KEA), which provides monthly €200 to every family with an additional €100 for each family member that is an adult and €50 for each family member that is a child.

See: <https://asylumineurope.org/reports/country/greece/content-international-protection/social-welfare/> (accessed on 12-06-2021)

Figure 2: total employment in illegal sector in 2017 by member state



Source: Williams et al. (2017, p.14) report in a research paper for the European Commission the share of undeclared work in the economy. I multiply this % with the total number of people working in the respective member state in 2017. The total number of people working in every member state is extracted from Eurostat ("Population and employment", code: NAMA_10_PE).

3.3. Back to Schengen: the success of an operational Dublin transfer system?

3.3.1. Why an operational Dublin transfer system solves the issue of asylum shopping

As long as asylum seekers only consider engaging in secondary movements for the purpose of asylum shopping, it is likely that member states of non-first entry will be willing to exclusively rely on interior enforcement policies to control the number of asylum seekers on their territory. The reason is that asylum seekers that engage in secondary movements for the purpose of asylum shopping need to apply for asylum in their destination member state of non-first entry which implies that they voluntarily need to expose themselves to the authorities of this member state. As a consequence, the member state of non-first entry does not need to allocate much resources to apprehending the asylum seekers and, since the Dublin transfer system is operational, apprehended asylum seekers can probably be transferred back without much problem.¹¹⁸ Since installing internal border controls is costly, the implication is that member states of non-first entry will likely be willing to exclusively rely on the Dublin transfer system if they want to prevent asylum shopping. If asylum seekers only move onward to other member states in order to influence which member state they will be hosted in, it

¹¹⁸ The fact that asylum seekers are registered upon arrival provides proof on what is the member state of first arrival of the asylum seeker. If this member state also maintains the minimum asylum standard on its territory, then this member state has no legal grounds to deny responsibility for these asylum seekers.

means that asylum seekers' secondary movements will no longer pose a threat for the borderless Schengen Area in the situation that the Dublin transfer system is operational.

3.3.2. Why asylum seekers moving into irregularity continue to pose problems

If asylum seekers consider engaging in secondary movements for the purpose of residing in a member state of non-entry with an irregular status, then it is unfortunately not evident that member states of non-first entry will exclusively rely on interior enforcement policies to control the number of asylum seekers on their territory. The reason is that it is not easy for member states of non-first entry to detect asylum seekers that move into irregularity. Since these asylum seekers do not voluntarily present themselves to the officials of the member state, member states of non-first entry would first need to invest resources in programmes that effectively apprehend the asylum seekers, who reside with an irregular status in their territory. The implication is that, if the Dublin transfer system is operational, it might still be costly for member states of non-first entry to carry out Dublin transfers. Asylum seekers' secondary movements might therefore with an operational Dublin transfer system still pose a threat to the borderless Schengen Area if a large number of asylum seekers consider a move onward to other member states in order to reside with an irregular status there.

Note that with an operational Dublin transfer system both asylum seekers with strong claims and asylum seekers with weak claims might consider engaging in secondary movements for the purpose of residing with an irregular status in a different member state than their member state of first arrival. Despite the fact that asylum seekers with strong claims will likely be deterred from engaging in secondary movements for the purpose of asylum shopping¹¹⁹ they might still consider moving onward to reside with an irregular status in a different member state than their member state of first arrival. Asylum seekers with weak claims are anyway only interested to reside with an irregular status in the EU.¹²⁰

4. The Schengen Crisis: an alternative narrative?

Member states of non-first entry argued that they needed to protect their societies from secondary movements that were spawned by the so-called wave-through policies pursued by member states at

¹¹⁹ An operational transfer system ensures that apprehended asylum seekers can easily be transferred back to their member state of first arrival after they have been apprehended. Since asylum seekers need to present themselves to the authorities of the destination member state if they want to apply for asylum there, this member state will be able to easily apprehend them and transfer them back. Asylum seekers will therefore realise that engaging in a secondary movement for the purpose of asylum shopping will not make much sense any longer.

¹²⁰ See subsection 3.2. of this chapter for a more elaborate description on why both asylum seekers with strong claims and asylum seekers with weak claims might consider engaging in a secondary movement for the purpose of residing with an irregular status in another member state than their member state of first arrival.

the EU's external border. It indicates that the adoption of border controls can be perceived as a logical consequence of the fact that member states at the EU's external border engaged in these policies by not complying with their responsibilities under EU law. In this section, I seek a potentially different narrative by focussing on how an unwillingness of member states of non-first entry to use interior enforcement policies in order to deal with asylum seekers' secondary movements into their territory can influence the willingness of member states at the EU's external border to comply with their responsibilities under EU law. Starting from the rationale that member states of non-first entry simply choose the bundle of enforcement policies that controls the number of asylum seekers on their territory in the most cost-effective way¹²¹, it cannot be ruled out that, if the Dublin transfer is operational, these member states will opt to rely on border enforcement tools if asylum seekers want to move into their territory for the purpose of residing there with an irregular status.¹²² It would mean that in both cases where member states at the EU's external border comply with their responsibilities, and in cases where they do not, member states of non-first entry might anyway strongly rely on border enforcement tools. The question that I address in this section is therefore why member states at the EU's external border would voluntarily invest costly resources in order to comply with their responsibilities under EU law if it does not change the choice of enforcement policies that member states of non-first entry will use to manage the number of asylum seekers on their territory (i.e. they will continue to rely on border controls anyway). I will use a game-theoretic model to analyse this.

4.1. The setting of the model

In the model the EU consists of two member states: a member state of first entry (labelled as "Italy") and a member state of non-first entry (labelled as "Austria"). The member states abolished the internal borders between them and, for this reason, they represent the Schengen Area. The setting of the model is that a civil war outside of the EU caused a large migration movement of asylum seekers towards the EU. All the asylum seekers have **strong asylum claims** and they enter the EU in Italy. Consistent with the structure of the Dublin system, Italy should host all arriving asylum seekers. Austria can use two types of enforcement tool to prevent the arriving asylum seekers from successfully engaging in secondary movements: 1) interior enforcement tools and 2) border enforcement tools. Importantly, Austria is only able to use the first type of tools if Italy complied with its responsibilities under EU law to register all arriving asylum seekers and maintain the minimum asylum standard on its territory.

¹²¹ See subsection 3.1. of this chapter.

¹²² See subsection 3.3. of this chapter.

4.1.1. Underlying assumptions of the model

Both member states are assumed to be rational, possess perfect information and furthermore they have the means to undertake all actions. The model makes three other important simplifying assumptions:

- 1) All asylum seekers want to reside in Austria either on a regular or an irregular status

Given that in this model we are talking about asylum seekers with strong asylum claims, they preferably would like to reside on a regular status in Austria. From the previous section it follows that if asylum seekers exclusively want to move to Austria for the purpose of asylum shopping, Austria would be willing to exclusively rely on the Dublin transfer system to deal with these secondary movements.¹²³ It means that if Italy complies with its responsibilities under EU law and the only motive for asylum seekers to move to Austria is in order to apply for asylum there, Austria will choose not to adopt internal border controls. Note furthermore that as a result of that Austria can transfer all asylum seekers who apply for asylum there back to Italy without much problem, it implies that asylum seekers will be effectively deterred from moving to Austria for the purpose of asylum shopping.

From the previous section it follows as well that if asylum seekers want to move to Austria for the purpose of residing with an irregular status there, it is not evident that Austria will be willing to exclusively rely on the Dublin transfer system.¹²⁴ Furthermore, I have argued that asylum seekers with strong claims might consider to engage in secondary movements for the purpose of residing with an irregular status in Austria if residence on a regular status is not feasible.¹²⁵ The implication is that if a large number of asylum seekers is interested in residing with an irregular status in Austria, it is (at least theoretically) possible that Austria will continue to strongly rely on border enforcement tools also after Italy complied with its responsibilities under EU law. Since in this model I am interested in a situation in which Austria does not necessarily want to rely on the Dublin transfer system to deal with asylum seekers' secondary movements into its territory, I focus on a setting in which asylum seekers with strong claims prefer to reside with an irregular status in Austria rather than on a regular status in Italy (i.e. if asylum shopping to Austria is not feasible they will prefer to move to Austria to reside there with an irregular status).

- 2) The use of enforcement tools leads to perfect enforcement.

¹²³ See subsection 3.3. of this chapter.

¹²⁴ See subsection 3.3. of this chapter.

¹²⁵ See subsection 3.2. of this chapter.

Both in the situation that Austria uses interior enforcement tools and in the situation that Austria uses border enforcement tools enforcement is perfect. The consequence of perfect enforcement is that all arriving asylum seekers remain in Italy.

3) *Austria's choice of enforcement is binary.*

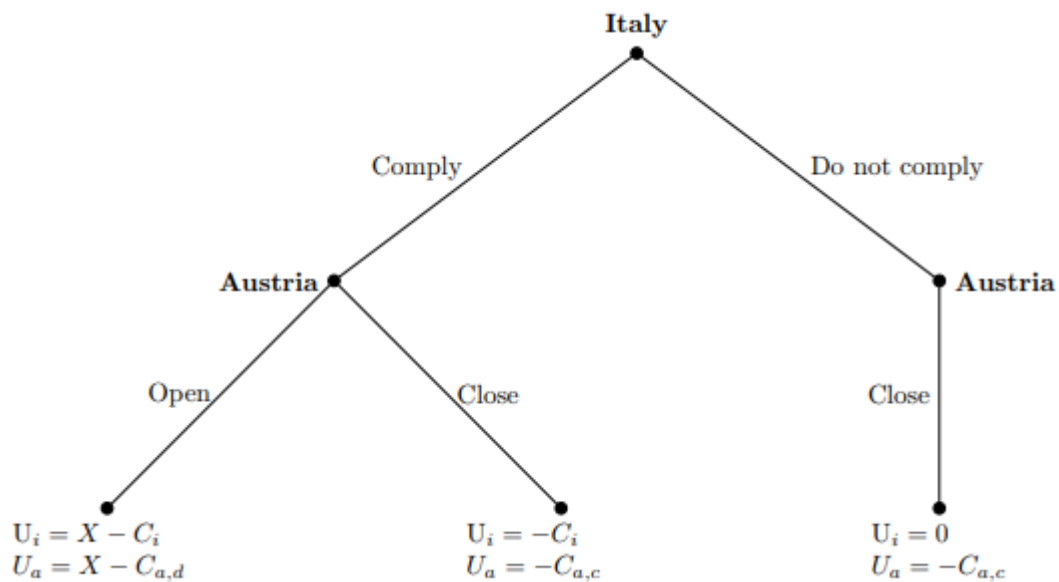
Austria either chooses the use of interior enforcement tools or the use of border enforcement tools to ensure that the arriving asylum seekers will remain in Italy. The model does therefore not provide the possibility that Austria can adopt a mix of the two policy tools.

4.1.2. The structure of the model

The model is dynamic. In the first round, Italy chooses whether it wants to comply with its responsibilities under EU law by registering all arriving asylum seekers (note that this presumes that Italy manages to detect all arriving asylum seekers at the EU's external border) and maintaining the minimum asylum standard on its territory. If Italy decides not to comply, all asylum seekers can effectively engage in asylum shopping if they manage to arrive in Austria. In contrast, if Italy complies then asylum shopping becomes practically an impossibility because asylum seekers will immediately be transferred back if they launch an asylum claim in Austria. It means that asylum seekers in that case only will consider to engage in a secondary movement for the purpose of residing with an irregular status there.

In the second round, Austria chooses how to ensure that the arriving asylum seekers cannot successfully engage in secondary movements. If Italy does not comply, then Austria does not have any other choice than to close its internal border in order to avoid asylum responsibility for a large number of asylum seekers. Instead if Italy complies, then Austria has the choice between using the Dublin transfer system (and relying on interior enforcement tools) or the adoption of internal border controls (and relying on border enforcement tools) to prevent a large number of asylum seekers from successfully residing with an irregular status on its territory. The game looks like this:

Figure 3: the game tree



The variables

In this model, both member states receive utility ($X \in [0, \infty]$) if the internal border remains open between them as a consequence of enhanced trade between Italy and Austria. In order to make sure that all asylum seekers will remain in Italy either both member states need to incur costs (Italy complies and Austria uses the Dublin transfer system) or only Austria needs to incur costs (closing the internal border). In the first situation Italy faces cost ($C_i \in [0, \infty]$) because it needs to set up a system that both ensures that all asylum seekers are fingerprinted and that the minimum asylum standard is guaranteed. Austria in its turn faces costs to enforce Dublin transfers as a result of needing to engage in interior enforcement tools to enforce the Dublin transfers ($C_{a,d} \in [0, \infty]$). The reason is that Austria first needs to apprehend the asylum seekers before it can effectively transfer the asylum seekers back. In the second situation, Austria faces costs for the closure of the internal border ($C_{a,c} \in [0, \infty]$) because in that case it needs to invest in border enforcement tools in order to prevent the asylum seekers from entering its territory.

The payoffs

There are three potential outcomes:

1. If Italy decides to comply and Austria decides to leave the internal border open and enforce Dublin transfers (I: Comply, A: Open), it results in a situation in which both member states receive the benefits (X) of having an open internal border between them. In order to comply Italy incurs the compliance costs (C_i) and in order to enforce the Dublin transfers Austria incurs the costs of the use of interior enforcement tools ($C_{a,d}$).

2. If Italy decides to comply and Austria decides to close (I: Comply, A: Close), Italy incurs the compliance costs (C_i) and Austria faces the costs of the use of border enforcement tools ($C_{a,c}$).
3. If Italy does not comply and Austria decides to close (I: Do not comply, A: close), Italy does not need to incur any compliance costs. Since Austria closes the border, it incurs the costs of using border enforcement tools ($C_{a,c}$).

4.1.3. Two scenarios

I will use two scenarios in order to evaluate whether Italy's choice to comply with its responsibilities under EU law depends on the set of enforcement tools that Austria ideally would like to adopt to prevent asylum seekers from residing with an irregular status on its territory. In the first scenario the use of interior enforcement tools is the most cost-effective option for Austria to avoid the secondary movements (in other words: $X - C_{a,d} > -C_{a,c}$) while in the second scenario the use of border enforcement tools is the most cost-effective option (in other words: $X - C_{a,d} < -C_{a,c}$). The model studies the incentives for Italy to comply with its responsibilities under EU law in both scenarios. The reason that I adopt these two scenarios is that in the first one Italy's compliance with its responsibilities under EU law will change the way how Austria deals with asylum seekers' secondary movements while in the second it does not (i.e. in the first scenario Austria will scale down its border enforcement policies while in the second one it does not).¹²⁶ By comparing both scenarios I will thus be able to evaluate whether Italy's incentives to comply with its responsibilities under EU law are stronger if Austria is willing to scale down on the use of border controls as a response on that Italy complies as compared to the situation when Austria is not willing to do this. If this is the case, then it is not unthinkable that a (potential) situation in which Austria will anyway strongly rely on border enforcement tools (both in the situation that Italy complies and in the situation that it does not) might have played a role in why Italy did not comply with its responsibilities under EU law in the first place. This would thus be an indication for the alternative narrative behind the Schengen Crisis that I sketched in the introduction of this section.

4.2. Solving the model

Since this model is dynamic and both Italy and Austria have perfect information, this model is solved by using the solution tool backward induction. As the name of the solution tool suggests it starts backwards. The rationale is that Italy will predict how Austria will respond in the situation that it complies and in the situation that it does not. In other words, Italy will anticipate how Austria will

¹²⁶ In both scenarios Austria will rely on border controls if Italy does not comply with its responsibilities. The difference between the two scenarios can be found in the situation that Italy chooses to comply. In the first scenario Austria will replace its border enforcement tools in favour of interior enforcements tools while in the second scenario Austria will continue to rely on border enforcement tools.

respond to both its actions and consequently choose the action that yields the highest level of satisfaction.¹²⁷

4.2.1. Scenario 1

Stage 2:

Given that Italy complies, will Austria open or close the internal border? Austria will compare $U_a(I: \text{comply}, A: \text{open})$ with $U_a(I: \text{comply}, A: \text{close})$. Given the assumption that for Austria the use of interior enforcement tools is more cost-effective than the use of border enforcement tools to avoid secondary movements, Austria will choose to leave the internal border open and use interior enforcement tools. Given that Italy does not comply Austria will not have any other choice than to close the internal border and use border enforcement tools in order to avoid the secondary movements.

Stage 1:

Italy knows that Austria will open the internal border if it complies and closes if it does not. Italy will thus compare $U_i(I: \text{comply}, A: \text{open})$ and $U_i(I: \text{do not comply}, A: \text{close})$. This yields that the solution of the game under scenario 1 is that Italy will comply and Austria will leave the internal border open if $X - C_i > 0$ and Italy will not comply and Austria will close if $X - C_i < 0$.

4.2.2. Scenario 2

Stage 2:

Given that Italy complies, will Austria open or close the internal border? Austria will compare $U_a(I: \text{comply}, A: \text{open})$ with $U_a(I: \text{comply}, A: \text{close})$. Given the assumption that for Austria the use of border enforcement tools is more cost-effective than the use of interior enforcement tools to avoid secondary movements, Austria will choose to close the internal border and use border enforcement tools. If Italy does not comply Austria will not have any other choice than to close the internal border and use border enforcement tools in order to avoid the secondary movements. Hence, independent of what Italy does, Austria will close the internal border.

¹²⁷ This requires the following two-step approach:

1. What are Austria's best responses given the action by Italy?
 - Given that Italy complies, what is the best response of Austria (Open or Close)?
 - Given that Italy does not comply, Austria will close.
2. Evaluate what these best responses of Austria yield to Italy?
 - Given that Italy complies and Austria's corresponding best response, what is the pay-off to Italy?
 - Given that Italy does not comply and Austria closes, what is the pay-off to Italy?

Italy chooses to comply or not by comparing these two pay-offs.

Stage 1:

Italy knows that irrespective of whether it complies or not Austria will always close the internal border. Italy will thus compare $U_i(I: \text{comply}, A: \text{close})$ and $U_i(I: \text{do not comply}, A: \text{close})$. Since 0 always exceeds $-C_i$, Italy will decide not to comply. This yields that the solution of the game under scenario 2 is that Italy does not comply and Austria closes.

4.2.3. Overview of the equilibria

Table 3: Nash Equilibria	
Scenario 1:	Scenario 2:
If $X - C_i > 0 \rightarrow$ (Italy comply; Austria open)	(Italy not comply; Austria close)
If $X - C_i < 0 \rightarrow$ (Italy not comply; Austria close)	

4.3. Discussion of the results

4.3.1. The main finding

The model shows that Italy is willing to comply under two conditions:

- 1) Austria is willing to replace its border enforcement tools with interior enforcement tools.
- 2) The corresponding gains in trade benefits (X) exceed the costs of compliance with its responsibilities under EU law (C_i).

Taking these two conditions together implies that Austria can provide incentives for Italy to comply with its responsibilities under EU law by credibly committing to refrain from the use of border enforcement tools if Italy complies. The intuition is that Austria provides Italy with a reward for its compliance by leaving its internal borders open (since this provides Italy with additional trade benefits). Whether these additional trade benefits are sufficient to convince Italy to comply depends on how costly it is for Italy to comply with its responsibilities under EU law.

An important factor that should be taken into account for this finding is that this rewarding mechanism only functions if Austria decides to adopt border controls in the situation where Italy does not comply with its responsibilities (the assumption behind the model that I used in this section is that Italy's non-compliance automatically leads to the closure of internal borders by Austria). As the 2015/2016 EU Asylum Crisis shows this is a realistic assumption if there is a large number of asylum seekers that wishes to engage in secondary movements. In contrast, in the period before this crisis member states at the EU's external border did not comply with their responsibilities under EU law and other member states nevertheless did not close their internal borders. Obviously, Austria will not create incentives

for Italy to comply with its responsibilities under EU law if it does not punish Italy by closing its internal borders in the case where Italy does not comply with these responsibilities.

4.3.2. Reflections on the simplifying assumptions

I have discussed three simplifying assumptions behind the model. I will now shortly expand on the impact of these assumptions on the main finding of the model. The mechanism that I have illustrated in this model sketches that Austria's unwillingness to replace its border enforcement tools with interior enforcement tools if Italy would comply with its responsibilities under EU law, can explain why Italy does not have incentives to comply with these responsibilities in the first place. In contrast, if Austria had been willing to do so, then Italy might have had incentives to comply. Whether Italy would have complied depends in that case on the sizes of the corresponding trade benefits that it would receive (as a consequence of the absence of internal border controls) and the costs it would need to make in order to comply with its responsibilities under EU law. The fact that Austria is willing to scale down on its use of border enforcement tools can thus in this context be seen as a reward to Italy for the investments that it needs to make in order to be able to comply.

Assumption: "Austria's choice of enforcement is binary and both tools lead to perfect enforcement"

This is the combination of assumptions 2 and 3. Relaxing these assumptions will not change the finding of the model much. In the model that I used Austria could either use border or interior enforcement tools. Both choices lead to perfect enforcement but differ in their cost structure (to Austria). If the use of interior enforcement tools has a favourable cost structure compared to the use of border enforcement tools, then Austria will opt for the former. The implication of this is that Austria "rewards" Italy for its compliance in the form of open internal borders between the two member states.

This rationale does not change much if I adopt more realistic assumptions that Austria can also use a mix of border and interior enforcement tools and that it is unlikely that any combination of enforcement tools will lead to perfect enforcement (and, even if there is, such a combination would likely be very costly). A more realistic assumption would therefore be that Austria chooses the set of enforcement tools that strikes the best balance between the extent to which the set of enforcement tools reduces the number of asylum seekers that are present on its territory (i.e. the benefits) and the costs that it would need to make to use this set of enforcement tools. In other words, Austria would choose the most cost-effective set of enforcement tools.¹²⁸

¹²⁸ See subsection 3.1. of this chapter.

How would this more realistic assumption change the main finding of the model that I presented in this section? If Italy does not comply, then Austria will, as the recent 2015/2016 EU Asylum Crisis shows, adopt a certain set of border enforcement tools to prevent large-scale secondary movements into its territory. Assuming that Austria is rational, it means that Austria has chosen a set of border enforcement tools that controls secondary movements in the most cost-effective way (note that this does not mean that none of the asylum seekers can successfully enter Austria's territory). If Italy complies, then Austria can opt to relax (some of its) border enforcement tools and replace them with interior enforcement tools to control the number of asylum seekers that can move into its territory. If sets of enforcement tools that heavily rely on border enforcement are cost-ineffective when compared to sets that do this less, then it is likely that Austria is willing to do this after the Dublin system has become operational. The more this is the case, the more Austria "rewards" Italy for its compliance with its responsibilities under EU law.¹²⁹

Assumption: "all asylum seekers want to reside in Austria either on a regular or an irregular status"

This is assumption 1. I made this assumption of a perfect categorical substitution effect to create a setting where it is not certain that if Italy complies, Austria will automatically scale down its use of border enforcement tools. This builds on the finding in the previous section that if asylum seekers are interested in moving to Austria for the purpose of residing with an irregular status there, it is not evident that Austria, even if it has the possibility to use the Dublin transfer system to deal with secondary movements of these asylum seekers, will also do this.¹³⁰ If I relax this assumption, it means that fewer asylum seekers will aim to move to Austria. The asylum seekers are, due to the presence of the Dublin transfer system, deterred from moving onward for the purpose of asylum shopping and only a small number is still interested in moving onward for the purpose of residing with an irregular status there. The implication is that Austria, although it still might not be willing to rely on interior enforcement tools to prevent asylum seekers' secondary movements, might opt to scale down on its use of border enforcement tools if Italy complies with its responsibilities simply because fewer asylum seekers will try to move into its territory to reside there with an irregular status. This can therefore be seen as an alternative rewarding mechanism to the one that I have outlined in this section because

¹²⁹ Note that there is still the assumption that if Italy decides to comply, it manages to identify all asylum seekers that arrive at its shores. This assumption is obviously also too strong. If I relax this assumption, this will similarly not change the main finding of the model. The less able Italy is to identify asylum seekers that arrive at its shores, the stronger Austria will need to continue to rely on border enforcement tools to deal with asylum seekers' secondary movements into its territory. It means that Austria is less able to reward Italy for its efforts to comply with its responsibilities to identify all arriving asylum seekers.

¹³⁰ See subsection 3.3. of this chapter.

Italy's compliance will involve Austria being willing to scale down on its use of border enforcement tools.

4.3.3. An alternative narrative?

The model indicates that a determination by member states of non-first entry to rely on border enforcement tools both in the cases that member states at the EU's external border comply and do not comply with their responsibilities under EU law, can (at least theoretically) offer an explanation for why member states at the EU's external border did not comply with their responsibilities under EU law. This model illustrates therefore that it is important to look beyond the role of member states at the EU's external border if we really want to understand the nature of the recent Schengen Crisis.

5. Reflections on potential institutional solutions

The analysis so far has shown that, even if the Dublin transfer system is operational, it is not certain that the borderless Schengen Area will prevail if a large number of asylum seekers considers engaging in secondary movements for the purpose of residing with an irregular status in another member state than their member state of first arrival. It is thus important to evaluate what policies the European Commission can adopt (next to the policies that make the Dublin transfer system operational) in order to reduce the risk that asylum seekers pose a threat to the borderless Schengen Area in the future.

5.1. A stronger role of the European Commission in internal border management

The European Commission can take a stronger role in the area of internal border management (as it envisioned in its own program "Back to Schengen Roadmap") in order to prevent asylum seekers, who consider to engage in a secondary movement for the purpose of residing with an irregular status in another member state than their member state of first arrival, pose a threat to the borderless Schengen Area. The consequence of the implementation deficit that the European Commission leaves with respect to this point of action is that it provides member states of non-first entry with the opportunity to adopt internal border controls also if it is not a tool of last resort. If the European Commission did what it expressed in the Roadmap, it would demand sound evidence that the adoption of internal border controls is really a tool of last resort.¹³¹ The implication is that member states of non-first entry first would need to prove why they cannot rely on interior enforcement policies to deal with asylum seekers' secondary movements before they can adopt border enforcement policies. This prevents member states of non-first entry from continuing to rely on

¹³¹ This requires that member states provide sound evidence that the introduction of internal borders is both a necessity and proportionate (Carrera et al., 2018, p.50).

border enforcement tools if they also have the availability to use the Dublin transfer system to deal with asylum seekers' secondary movements.

5.2. Policies that make moves into irregularity less attractive or more difficult

Since asylum seekers might mainly pose a problem if they want to engage in secondary movements for the purpose of residing with an irregular status in a different member state than their member state of first arrival, an alternative solution might be to adopt policies that make it less attractive or less easy for asylum seekers to engage in a secondary movement for the purpose of moving into irregularity. Recall that both asylum seekers with strong claims and asylum seekers with weak claims are potential candidates to move into irregularity.¹³² Since asylum seekers with strong claims weigh the utility level of being hosted in a regular manner in their member state of first arrival against the utility level of being hosted in another member state in an irregular manner, it is likely to be more easy to convince asylum seekers with strong claims by offering good asylum conditions in their member state of first arrival. It requires a different approach to convince asylum seekers with weak claims not to move into irregularity in another member state because these people only use the EU asylum system as an excuse to enter the EU. It means that strong institutions are needed to prevent these asylum seekers from absconding from the asylum procedure. Examples include the use of asylum procedures at the EU's external border through so-called border procedures and if necessary containment of asylum applicants. Problematic in this second set of policies is that its implementation strongly depends on member states at the EU's external border and the interests of these member states are not well aligned with the goal of the CEAS to prevent asylum seekers' secondary movements. It is therefore unlikely that these member states will implement these policies voluntarily which implies that the EU would need to engage in intensive monitoring and enforcement to force member states at the EU's external border to implement these policies.

6. Conclusion

In this chapter, I have focused on the need for, and limits of, an operational Dublin transfer system to manage hosted asylum seekers in the EU in a way that they do not present a threat to the existence of the borderless Schengen Area. If the Dublin transfer system is not operational, then the closure of internal borders is a necessity for member states of non-first entry to use border enforcement policies to manage the number of asylum seekers on their territory. This explains the need for an operational transfer system to manage the hosted asylum seekers in a way that they do not present a threat to the existence of the borderless Schengen Area.

¹³² See subsection 3.2 of this chapter.

The sole existence of an operational Dublin transfer system appears however not necessarily to be sufficient to ensure that asylum seekers' secondary movements do not any longer pose a threat to the borderless Schengen Area. Admittedly, it solves the issue of asylum shopping. The problem is however that asylum seekers might not only be interested in engaging in secondary movements for the motive of asylum shopping but also for the motive of residing with an irregular status in another member state. If a large number of asylum seekers desires this latter option, then it is not obvious that member states of non-first entry will voluntarily abolish all forms of internal border controls to prevent these asylum seekers from successfully residing on their territory. The reason is that it will not be easy for member states of non-first entry to apprehend asylum seekers that moved into their territory for the purpose of residing with an irregular status there. Since this makes it costly for the member states of non-first entry to use interior enforcement policies, these member states might simply decide that it is more cost-effective for them to (continue to) rely on border enforcement tools to deal with these secondary movements into their territory.

The implication of these findings is that the European Commission should consider adopting additional policies (next to the policies that make the Dublin transfer system operational) in order to reduce the risk that asylum seekers pose to the borderless Schengen Area. A first approach would be to adopt further policies to ensure that member states of non-first entry only rely on border enforcement tools as a true tool of last resort. This would limit the choice of member states of non-first entry to adopt border enforcement tools if the Dublin transfer system is operational.

A second approach would be to adopt policies that make it less attractive or more difficult for asylum seekers to engage in secondary movements in order to reside with an irregular state in a new member state. The member state of first arrival can reduce the willingness of asylum seekers with strong claims to engage in secondary movements by offering better asylum conditions. Similarly the member state of first arrival can make it more difficult for asylum seekers with weak claims to engage in secondary movements by preventing them from absconding from the asylum procedure. The disadvantage of this second approach is that member states at the EU's external border, as the main member states of first arrival, play a key role for their implementation. These member states have however an interest in encouraging asylum seekers (with both weak and strong claims) to engage in secondary movements in order to reduce their hosting and return duties. It highlights the observation by Den Heijer et al. (2016, p.641) that it is very difficult to construct a functioning CEAS as long as both asylum seekers and member states have incentives to work against, rather than with, the system.

Chapter 4:

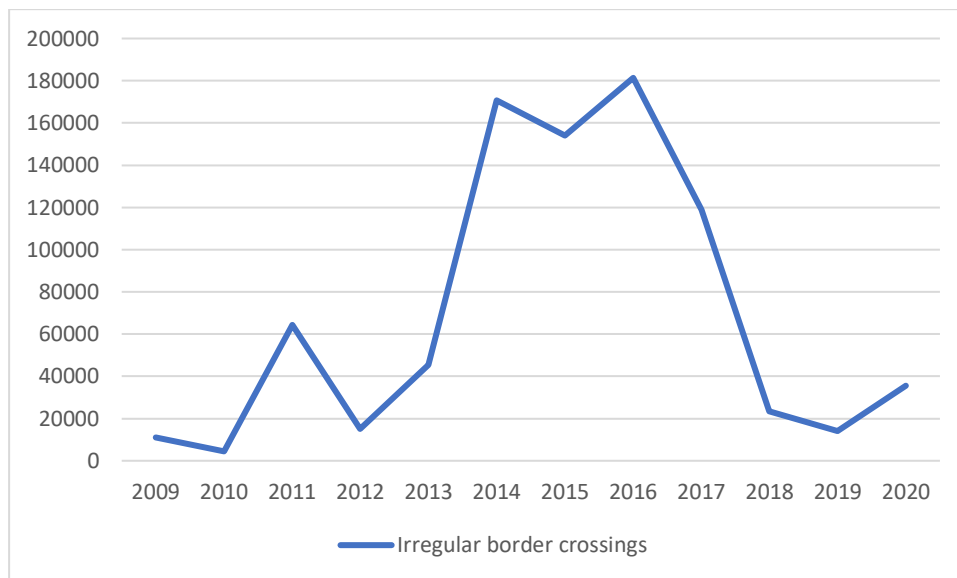
From Operation Mare Nostrum to the Criminalisation of NGOs and Libyan pushbacks: the Dublin system as an explanatory factor for the adoption of Italian non-entrée policies?

1. Introduction

Between 2014 and 2020 Italy adopted a remarkable change in its management of irregular migration flows in the Central Mediterranean. In 2014, Italy still adopted an approach that left migrants relatively free to attempt to cross the Central Mediterranean Sea and Italy itself engaged actively in Search and Rescue (from now on: **SAR**) operations to save migrants that came into trouble during this trip (by means of Operation Mare Nostrum). This gradually changed to an approach in which Italy wants to prevent people from trying to cross the Central Mediterranean and adopts a more passive or even negative position towards the provision of SAR services. Gloninger (2019) labels it as a move “from *humanitarian rescue to border security*”. The main explanation behind this new policy approach is that Italy wants to prevent further irregular arrivals on its territory. The different policies that Italy started to use in order to reduce the number of irregular arrivals on its territory can be categorised into three groups: Italy’s disengagement in the provision of SAR services (from 2015), the criminalisation of NGOs that provide SAR services (from 2017) and increased collaboration with Libya to reduce departures from there (from 2017).

Figure 4 shows the extent to which the policies were successful. Especially from 2018 onwards, it seems that Italy managed to significantly reduce the number of irregular arrivals on its territory. The consequence of this change in policy approach is that it becomes more dangerous and difficult to cross the Central Mediterranean. Given that there are very limited resettlement opportunities for asylum seekers to the EU and Libya cannot be considered as safe (Carrera and Cortinovis, 2019a, p.33), these policies leave asylum seekers therefore with a choice of undertaking a dangerous journey to cross the Central Mediterranean or to stay in degrading circumstances in Libya. The policies have thus an important negative impact on asylum seekers’ access to the EU asylum system with the risk that it leaves them without protection (Moreno-Lax, 2018; 2020).

Figure 4: the number of irregular arrivals in Italy (2009-2020)



Source: Frontex, "Detections of irregular borders-crossings statistics".

Given this undesirable impact on asylum opportunities for asylum seekers, it is important to have a better understanding on why Italy gradually adopted more and more policies between 2014 and 2020 to avoid further irregular arrivals on Italian territory. Obviously there might be different reasons. Although there is abundant literature stating that the Dublin system creates incentives for member states at the EU's external border to adopt wave-through policies in order to escape from new asylum duties¹³³, there is much less interest that the Dublin system might also create incentives for these member states to adopt non-entrée policies for this same goal (notable exceptions include Langford, (2013, p.238-239), Cusumano (2019, p.8) and Turrini (2019, p.30)). The latter view would coincide with a commonly held view among scholars that practically all developed western states adopted non-entrée policies in order to avoid new asylum responsibilities (see for instance Hathaway (1992), Gammeltoft-Hansen and Hathaway (2015), Fitzgerald (2019), Ghezelbash (2020)). These policies that aim at preventing asylum seekers from accessing their territory follow from the fact that under international refugee law asylum seekers are entitled to assert protection claims in a state if they manage to come under the jurisdiction of this state (Gammeltoft-Hansen and Hathaway, 2015, p.240). Since the Dublin system allocates EU asylum responsibilities based on the authorisation principle¹³⁴ (the member state of first entry criterion), it can theoretically create similar incentives for member states at the EU's external border to adopt non-entrée policies that aim at preventing asylum seekers from coming under their jurisdiction.

¹³³ See subsection 4.2. of chapter 2.

¹³⁴ See subsection 3.3. of chapter 2.

Yet, although theoretically a fear for new asylum duties might be (part of) the explanation, it leaves an important question unanswered. Given that the Dublin system was adopted in 1990 and therefore allocated asylum duties based on the authorisation principle in the entire period between 2014 and 2020, one would need to answer why Italy in this period would feel the need to adopt new forms of non-entrée policies in order to prevent further asylum responsibilities. The main explanation that can be found in the literature is that states develop new forms of non-entrée policies if the current ones do not work anymore as a consequence of new legal and practical barriers (Gammeltoft-Hansen, 2014, p.586-587; Gammeltoft-Hansen and Hathaway, 2015). It means that if under the current set of non-entrée policies asylum duties increase rapidly, it should be expected that new forms of non-entrée policies will be adopted.

In this chapter, I will offer an analysis of whether the explanation by Gammeltoft-Hansen and Hathaway can offer an explanation for why Italy from 2014 onwards has gradually adopted an increasingly restrictive policy approach with respect to new irregular arrivals on Italian shores. This analysis will help me to answer the first research question of my dissertation: “What are the obstacles of the choice to maintain the Dublin System for the quest to ~~EU body functions~~ ^{EU body functions}?” If it appears to be that the Dublin system indeed creates incentives for member states at the EU’s external border to adopt non-entrée policies, then the Dublin system does not only create incentives for member states at the EU’s external border that increase the risk of future Schengen crises but also the risk of future humanitarian crises.

2. The legal context of the SAR regime

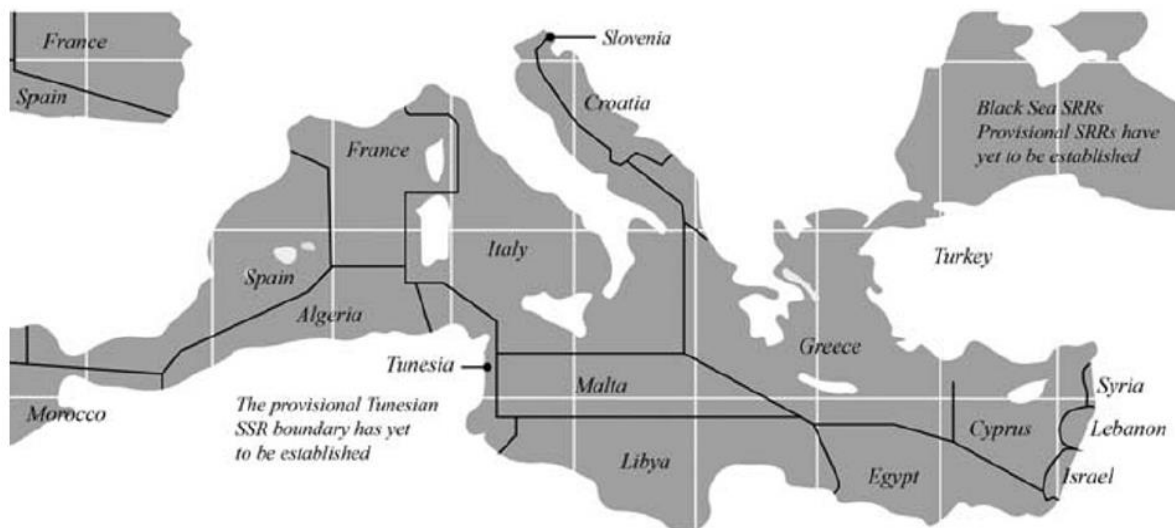
The global SAR regime consists of a large canvas of overlapping treaty frameworks of which the most important are the International Convention for the Safety of Life at Sea (SOLAS Convention), the International Convention on Maritime Search and Rescue (SAR Convention) and the United Nations Convention on the Law of the Sea (UNCLOS) (Ghezelbash et al., 2018, p. 317-318).

2.1. SAR obligations for coastal states: coordination of effective SAR services

Article 98 of UNCLOS expresses the main idea behind the SAR regime. It creates obligations for both flag and coastal states: every state ought to ensure that a ship flying its flag renders assistance to any person found in distress at sea (sub 1) and every coastal state needs to establish an effective SAR regime (sub 2). The SOLAS and the SAR Conventions provide the more detailed structure of the SAR regime (Klein, 2014, p.796). The former Convention focuses more on the obligations for flag states while the latter provides the main obligations for coastal states.

The aim of the SAR convention is to establish “an international system for coordinating rescue operations that guarantees their efficiency and safety” (Trevisanut, 2010, p.528). The Convention prescribes that the participating states need to establish SAR Regions in which the responsible state needs to operate effective SAR services (Trevisanut, 2013; Aalberts and Gammeltoft-Hansen, 2014, p.445; Gammeltoft-Hansen, 2016, p.68; Cusumano and Pattison, 2018, p.58) (Figure 5 shows the current SAR zones in the Mediterranean Sea).¹³⁵ Operating effective SAR services means that if a state receives a distress call from a vessel present, which is in need of rescue in its SAR zone, the authorities of that state need to coordinate SAR activities in a way that yields the best assistance feasible. For this purpose states are required to establish a rescue coordination centre (Carrera and Cortinovis, 2019a, p.12).¹³⁶ After a rescue coordination centre receives a distress call it can respond by providing SAR itself or by requesting help from other vessels (private vessels or vessels of other states) (Trevisanut, 2013; Klein, 2014, p.796-797). The rescue coordination centre is furthermore responsible for finding a safe place of disembarkation.

Figure 5: SAR zones in the Mediterranean



Source: Aalberts and Gammeltoft-Hansen (2014, p.450)

2.2. The problem of the politics of interpretation

States hardly dispute that the international legal system creates SAR obligations for states, but discussions start on the specific content of these SAR obligations (Barnes, 2004, p.76; Gammeltoft-Hansen, 2016, p.66-67 Ghezlbash et al., 2018, p.316-317). This leads to a situation which Gammeltoft-Hansen qualifies as the “politics of interpretation”. It means that states interpret the content of their SAR obligations in a way that fits their own interests best. Two debated issues are

¹³⁵ The SAR Convention 1979 prescribes that the participating states need to establish SAR regions (annex article 2.1.4.) in which the responsible state needs to operate effective SAR operations (annex article 2.1.9).

¹³⁶ See SAR Convention (1979) annex articles 2.3.1. to 2.3.3.

when a situation qualifies as “distress” and the content of the “duty of disembarkation” (Gammeltoft-Hansen, 2016, p.68; Komp, 2016, p.231). The definition of “distress” is relevant because a coastal state only has an obligation to offer effective SAR services to a person if this person is found in distress in its SAR zone. By opting for a restrictive interpretation of “distress” a state aims thus to avoid responsibility to effectively rescue people. Similarly, the “duty of disembarkation” is an important issue because it defines when the duty of a coastal state with respect to a rescued person ends. In 2004, an amendment has been made to the SAR convention to clarify the “duty of disembarkation”. The coastal state in whose SAR zone persons in distress have been rescued face an obligation to find a port in which they can safely disembark. However, this does not automatically imply that this coastal state has a residual obligation to allow them access to its own territory if such a port cannot be found in another state (Coppens and Somers, 2010, p.392; Gammeltoft-Hansen, 2016, p.68; Cusumano and Gombeer, 2020, p.249).¹³⁷ It means that the state responsible for coordinating the rescued people can opt for a restrictive interpretation of the “duty to disembark” with the consequence that rescued people cannot disembark anywhere.

2.3. The limited scope of EU law

EU law does not create any obligations regarding SAR operations except for activities during joint-Frontex operations.¹³⁸ Joint-Frontex operations are usually launched upon the request of a host member state.¹³⁹ When engaging in such a joint-Frontex operation, member states need to render assistance to people in need of distress.¹⁴⁰ Consistent with the international SAR regime, rescued people will never be disembarked in a place that would violate the non-refoulement principle.¹⁴¹ During a joint-Frontex operation, there is furthermore always a residual duty to disembark rescued people in one of the EU member states if a safe port of disembarkation cannot be found elsewhere. If rescued people are found in the territorial sea or continuous zone of a coastal EU member state, these people will be disembarked in that member state.¹⁴² If people are rescued in the open seas, then there rests a residual duty of disembarkation on the member state that hosts the joint-Frontex operation.¹⁴³

¹³⁷ See SAR Convention amendment (2004) annex article 3.1.9.

¹³⁸ REGULATION (EU) No 656/2014 (Maritime Surveillance Regulation) specifies some duties for member states when they engage in activities at the EU’s external border in the context of a joint-Frontex mission (see article 1s).

¹³⁹ Article 15 of REGULATION (EU) No 2016/1624 (European Coast and Border Guard Regulation).

¹⁴⁰ Article 8 of REGULATION (EU) No 656/2014 (Maritime Surveillance Regulation).

¹⁴¹ Article 4 of REGULATION (EU) No 656/2014 (Maritime Surveillance Regulation).

¹⁴² Article 10(1.a) of REGULATION (EU) No 656/2014 (Maritime Surveillance Regulation).

¹⁴³ Article 10 (1.b) of REGULATION (EU) No 656/2014 (Maritime Surveillance Regulation).

3. The gradual change of Italian irregular migration management (2014-2020)

3.1. Italian irregular migration policy in the Central Mediterranean (2014-2020)

Carrera and Cortinovis (2019a, p. 3-9) detect three recent trends with respect to irregular migration management in the Central Mediterranean: the disengagement of Italy and the EU in the supply of SAR services (from 2015), the criminalisation of NGOs that provide SAR services (from 2017) and the increased collaboration with Libya to avoid departures (from 2017).

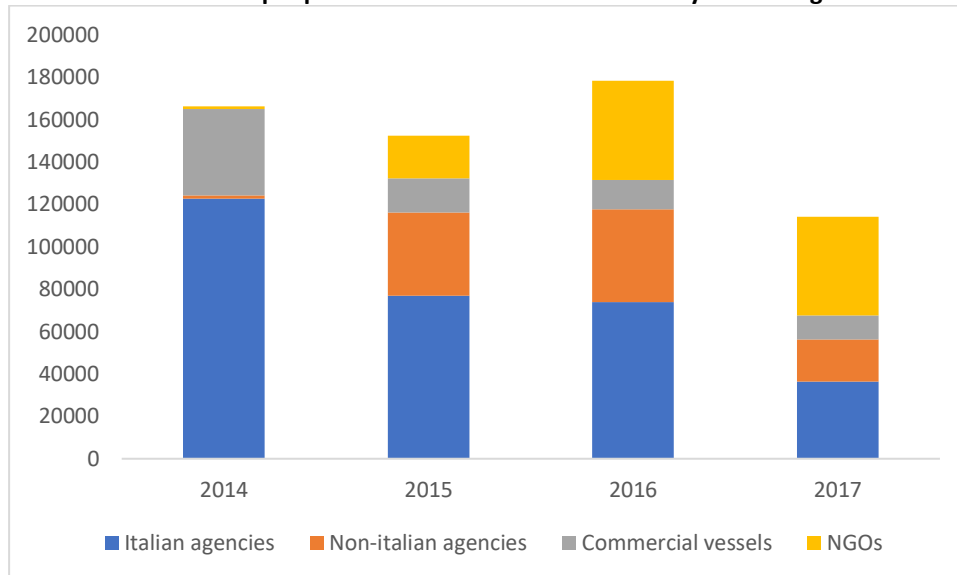
3.1.1. Trend 1: the disengagement of SAR provision by Italy and the EU (2015-...)

In October 2013, a ship sank near to the island of Lampedusa and 366 people died. As a response Italy launched operation Mare Nostrum. The goal of this operation was dual by having both a security and a search and rescue dimension.¹⁴⁴ The adoption of this operation has been remarkable because before its adoption SAR services in the Central Mediterranean had been carried out on an ad hoc basis after a distress call had been received (EPSC, 2017, p.3). In practice, it means that the Italian rescue operation centre coordinated with commercial and public vessels to provide rescue services after it received a distress call. In contrast, operation Mare Nostrum with an own operational fleet had a more pro-active character. The operation furthermore operated in a large area comprising the Italian, Maltese and Libyan SAR zones (EPSC, 2017, p.3).

After one year Italy stopped the operation due to the high costs and it was replaced with the less ambitious (by Italy hosted) Joint Frontex operation Triton (Abbondanza, 2017, p.87). This operation did not only operate in a much smaller geographical area (only part of the Italian SAR zone) but SAR services also became a by-product of the mission since the primary objective of the mission was ensuring border security (Carrera and Den Hertog, 2015, p.7-10; Llewellyn, 2015, p.10-12). In 2015 as a response on some tragic incidences, the EU also launched operation EUNAVFOR MED Sophia with the main aim to address smuggling networks (Llewellyn, 2015) and furthermore increased the territorial scope of operation Triton also labelled as operation Triton (Ghezelbash et al. 2018, p.327) such that it included both the Italian and the Maltese SAR zones. Since the EU operations were not as successful in saving lives as operation Mare Nostrum several NGOs started to provide SAR services (Cusumano, 2017a). Data shows that the role of NGOs in offering SAR services strongly increased in the period 2014-2017 (see figure 6). NGOs were responsible for 1% of the number of rescued people in 2014 while this was 41% in 2017 (which even made them the main provider of SAR services in 2017).

¹⁴⁴ See the website of the Italian ministry of defence for more information on the operation (<https://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>) (accessed on 27/07/2021).

Figure 6: the number of rescued people in the Central Mediterranean by rescue organisation and year



Based on a report by Guardia Costiera (2017, p.14)

Note: The total number of people per year 166.370 (in 2014), 152.344 in (in 2015), 178.451 (in 2016) and 114.286 (in 2017)

After 2018 the EU has even further scaled down its SAR activities due to disembarkation issues of rescued people (see Carrera and Cortinovis (2019a, p.7-8)). In both operation Triton and operation EUNAVFORMED Sophia the rule was that all rescued migrants should disembark in an Italian port. In the case of operation EUNAVFORMED Sophia it led to a situation that sea patrols were withdrawn from the operation and that patrols therefore only could take place by air. Operation Triton was in 2018 replaced by operation Themis. The new operation has a reduced operational space that only includes the Italian SAR zone and does therefore not any longer include the Maltese SAR zone. Furthermore, the rule that all rescued people should disembark in an Italian port has been dropped. Carrera and Cortinovis (2019a, p.8) summarise the events in a striking way by stating that "the limited involvement of Frontex operation Themis in SAR activities is just the last step in disengagement SAR activities in the Central Mediterranean that was initiated with the choice in 2014 to replace the Mare Nostrum operation with much less ambitious (in terms of SAR capacity) operation Frontex Triton".

3.1.2. Trend 2: the criminalisation of SAR provision by NGOs (2017-...)

From 2017 onwards Italy has pursued a number of policies that obstruct NGOs from running effective SAR operations in the Central Mediterranean by criminalising their activities. The goal of these policies is to reduce the number of rescued people that these NGOs bring to Italian shores. In July 2017, Italy developed a Code of Conduct for NGOs, which NGOs that operated in the Central Mediterranean had to sign. The goal of this Code of Conduct is to control and limit effective SAR operations (Tosoni, 2019).

The main thing that Italy wanted to avoid with this Code is that SAR provision by NGOs would facilitate human smuggling to Italy. For this reason the Code of Conduct prescribes that NGOs cannot enter into Libyan waters, cannot interfere with Libyan SAR operations and are prohibited from using telephone communications or light signals.¹⁴⁵ Despite the fact that the legal consequences of not-signing the Code are unclear, not-signing might seriously make it difficult for an NGO to carry out effective SAR operations (Cusumano, 2017b, p.111-112). A simple example is that, even in the circumstance that Italy is responsible for finding a safe port of disembarkation, it might refuse to let NGOs disembark migrants in one of its own ports. This might lead to a situation in which for a longer period no safe port can be found and the NGO vessels (with the rescued migrants on board) need to remain at sea.

After the Lega Party and the Five Star Movement formed a new coalition and Matteo Salvini assumed the post of Minister of Home Affairs in 2018 there have been several incidences in which NGOs vessels that had rescued people at sea were not allowed access to enter Italian ports (Cusumano and Gombeer, 2020, p.246-247). In June 2018, the ship *Aquarius* rescued several people in distress at sea under the coordination of the Italian rescue coordination centre. Italy, did not give the ship permission to disembark the rescued migrants in Italy though and the ship could not enter any port until Spain eventually allowed the ship to disembark the rescued migrants in Valencia.¹⁴⁶ In January 2019, a similar incidence occurred. The ship *Sea Watch* was only allowed to disembark in Italy after other member states pledged to assume responsibility for some of the rescued asylum seekers.¹⁴⁷ In June 2019, Italy adopted a new decree, which gave the Minister of Home Affairs the possibility to deny ships entry to Italian ports if these ships are suspected of violating Italian immigration law.¹⁴⁸ If a ship without authorisation nevertheless entered an Italian port, its shipmaster risked a fine (between €150.000 and €1.000.000) and the ship could be seized.

After the Lega Party broke the coalition with the Five Star Movement and was replaced by the Democratic Party, the government in September 2019, the criminalisation of SAR services has ceased somewhat but did not disappear completely (Cusumano and Villa, 2021, p.32). The new Minister of Home Affairs Luciana Lamorgese allows vessels from NGOs to arrive on Italian territory again and sought cooperation with EU member states to share SAR responsibilities. Although in September 2019

¹⁴⁵ The first two mentioned obligations show the strong connection of the Code of Conduct with the earlier-mentioned Italy-Libya deal that aims at preventing further departures from Libya to Italy.

¹⁴⁶ See Politico, "Spain will welcome migrant rescue ship turned away by Italy", 6-11-2018, online: <https://www.politico.eu/article/spain-will-welcome-migrant-rescue-ship-turned-away-by-italy-pedro-sanchez-matteo-salvini/> (accessed on 27/07/2021).

¹⁴⁷ See Reuters, "Migrants disembark in Italy as Rome vows to continue hard line", 31-01-2019, online: <https://www.reuters.com/article/us-europe-migrants-italy/migrants-disembark-in-italy-as-rome-vows-to-continue-hard-line-idUSKCN1PP1Y7> (accessed on 27/07/2021).

¹⁴⁸ See Human Rights Watch, "Italy revoke abusive anti asylum decrees", 31-01-2020, online: <https://www.hrw.org/news/2020/01/31/italy-revoke-abusive-anti-asylum-decrees> (accessed on 27/07/2021).

the Ministers of Home Affairs of France, Germany, Italy, Malta and Finland adopted the Malta declaration which stated that rescued migrants in the high seas of the SAR zones of Italy and Malta would be reallocated to the other three member states (Carrera and Cortinovis, 2019b, p.4), this declaration is still strongly based on the Italian Code of Conduct from 2017.

3.1.3. Trend 3: the increased involvement of Libya to reduce departures (2017-...)

In 2017 Italy closed a deal with Libya with the goal that fewer migrants are effectively able to depart from Libya (also referred to as the Italy-Libya deal or more officially the Italy-Libya Memorandum of Understanding, for a legal overview of the deal see De Guttery et al., (2018)). A large part of this deal is that Italy assists Libya so that it can prevent migrants from exiting Libyan waters by means of so-called pullbacks (Moreno-Lax et al., 2019, p.723). In order to help Libya to set-up a Coast and Border Guard that is able to effectively do this, Italy has sent technological and financial support (De Guttery et al., 2018, p.53). In fact, according to Moreno-Lax et al. (2019 p.623-624) it is thanks to the Italian help that the Libyan Coast and Border Guard effectively managed to carry-out 20.000 pullbacks in 2017.

3.2. The gradual policy change: the quest to stop further irregular arrivals in Italy

To summarise the discussion in this section, I have discussed three trends that indicate that irregular migration management has gradually become increasingly restrictive in the Central Mediterranean between 2014 and 2020. It is important to emphasise the central role that Italy played in these three trends.

In 2014 Italy had an attitude towards SAR provision that went beyond the obligations from the international SAR regime and it did not actively aim at avoiding arrivals from Libya to Italy. The main example of this is the launching of operation Mare Nostrum. This positive attitude gradually changed after the 2015/2016 EU Asylum Crisis. Initially Italy did not actively oppose the SAR regime. It hosted the joint Frontex operation Triton, which puts a residual duty of disembarkation on Italy, and also most rescued people from operation EUNAVFOR MED Sophia, which was not an operation by Frontex and therefore did not possess this residual duty, were disembarked in Italy (European Policy Centre, 2019, p.2).

Around 2017 Italy started to collaborate more actively with Libya to prevent departures from Libya to Italy. Moreover, it also started more actively to oppose an effective SAR regime in the Central Mediterranean by preventing rescued migrants from being disembarked in Italian ports. This resulted in further disengagement of EU SAR operations in the Central Mediterranean and the criminalisation of NGOs. The first type of events reduced disembarkations to Italy because the new Frontex operation Themis was launched without the residual duty of disembarkation in Italy and operation EUNAVFOR

MED Sophia had to withdraw its vessels from the operation.¹⁴⁹ The second type of policies does the same by making it more difficult for NGOs to rescue people in distress and, if they nevertheless managed to rescue people in distress at sea, by making it as difficult as possible for NGOs to disembark rescued migrants in Italy.

4. The Dublin system and non-entrée policies

The question is what can explain the gradual policy change by Italy to increasingly stop further irregular arrivals in Italy. In the remaining part of this chapter, I will evaluate whether a fear for new asylum duties can offer an explanation.

4.1. The theoretical link between irregular arrivals and asylum duties

It is well-established in legal scholarship researching international refugee law that practically all developed states in the world adopt non-entrée policies to avoid new asylum duties (e.g. Hathaway (1992), Gammeltoft-Hansen and Hathaway (2015), FitzGerald (2019) and Ghezelbash (2020)). Since international refugee law only provides asylum rights in a state for people that manage to fall under the jurisdiction of this state, non-entrée policies can effectively avoid further asylum duties for states if they successfully manage to avoid that asylum seekers manage to fall under their jurisdiction. As Gammeltoft-Hansen and Hathaway (2015, p.241) argue the goal of western states to engage in these policies is therefore to avoid *“the expectation that follows from the duty of non-refoulement, namely that refugees who manage to get to their jurisdiction are entitled to assert protection claims against them”*.

The Dublin system provides similar incentives for member states at the EU’s external border to adopt non-entrée policies. If asylum seekers manage to fall under their jurisdiction, then these member states at the EU’s external border are under the structure of the Dublin system responsible to host the migrants if they manage to arrive on their territory and decide to apply for asylum. For this reason, it might be the case that the Italian policies, which aim at preventing migrants accessing its territory, are (partly) motivated to avoid new asylum duties.

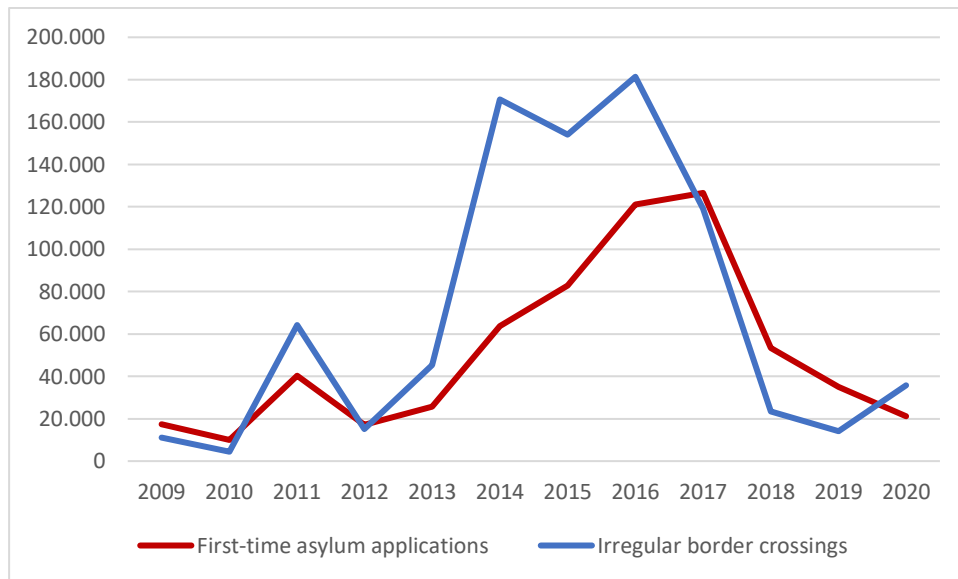
4.2. The relationship between irregular arrivals and asylum duties

Arrivals of irregular migrants can theoretically thus lead to new asylum duties for Italy. Figure 7 provides an indication of the extent to which this theoretical link turns into an actual link. The strength

¹⁴⁹ Importantly it was Italy that pressed for the withdrawal of ships in operation EUNAFVORMED Sophia <https://www.politico.eu/article/eu-extends-operation-sophia-for-6-months-still-without-ships/> (accessed on 30/06/2021).

of this link is important because it provides an indication of the degree of urgency of avoiding further irregular arrivals if a member state wants to avoid further asylum duties.

Figure 7: the annual number of asylum applications and irregular border crossings in Italy (2009-2020)



Source: Eurostat, "Asylum and first time asylum applicants by citizenship, age and sex - annual aggregated data (rounded)" (online data code: MIGR_ASYAPPCTZA) and Frontex, "Detections of irregular borders-crossings statistics".

The figure shows that there is a positive relationship between the number of asylum applications and the number of irregular borders crossings between 2009 and 2020. Despite the fact that it is not a perfect 1-to-1 relationship (a Pearson correlation coefficient of 0,82), the figure shows that generally the number of asylum applications in Italy tends to increase in the years when the number of irregular border crossings in Italy also increases.¹⁵⁰

4.3. Asylum duties: hosting and return duties

It is important to recall that if a member state is responsible for an asylum seeker, this involves a multitude of duties for the member state. Next to the fact that the member state needs to assess the asylum seeker's asylum claim, it also includes the duties to host a person if he proves to qualify for international refugee protection (hosting duties) and return a person if it appears that he does not qualify for asylum status (return duties).¹⁵¹ The main explanation of this chapter focuses on how Italy's hosting duties for refugees recently have developed and whether this can provide an explanation for

¹⁵⁰ In fact, a perfect relationship was also not to be expected. In some years the number of irregular borders crossing might exceed the number of asylum applications because not all migrants that arrive in an irregular manner are interested in applying for asylum in Italy. In other years, the number of asylum applications might exceed the number of irregular border crossings because there are also asylum applicants that arrive in a regular manner. There might also be cases that migrants arrive in an irregular manner but do not immediately apply for asylum.

¹⁵¹ See subsection 3.3. of chapter 2 for a description of the Dublin system and an overview of what it involves to be responsible for an asylum seeker under the Dublin system.

why Italy adopted a series of policies to avoid further arrivals of irregular migrants on Italian territory between 2014 and 2020.

5. Theoretical framework

It is necessary to understand what drives member states (like Italy) in order to evaluate whether a fear for new hosting duties can actually offer an explanation for why Italy gradually adopted a series of policies between 2014 and 2020 that aim at stemming irregular migration flows towards Italy. For this purpose I develop a theoretical framework from which will follow predictions on how Italy will behave under different circumstances.

5.1. Hosting policy preferences

Legal scholarship has explained that the Dublin system creates incentives for member states at the EU's external border to avoid new asylum duties in order to prevent their asylum systems becoming overburdened.¹⁵² In this dissertation, I opt to adopt a framework that is more common in the economic literature by focussing on a member state's hosting preferences (and not its hosting capacity) as the driving factor for a member state to adopt policies that aim at managing the level of its hosting duties.¹⁵³

I will base my analysis on an assumption regarding Italy's preferences to host refugees. This assumption follows from how the economic literature tends to view the hosting preferences of states. Usually economists assume that a state receives benefits from hosting refugees, which increase linearly with the number of refugees that need to be hosted in the state, while the costs increase quadratically in the number of refugees that need to be hosted (see for instance Czaika (2009), Fernández-Huertas Moraga and Rapoport (2014) and Hatton (2017)). The simplest way to do this is as follows:

$$U = \alpha R - \gamma R^2 \quad (2)$$

¹⁵² See subsection 4.2. of chapter 2. Note that these scholars primarily refer to the adoption of wave-through policies while in this chapter I focus on the adoption of non-entrée policies. In practice, both types of policies can be used by member states at the EU's external border to prevent new hosting duties. Non-entrée policies do this by preventing asylum seekers from accessing the territory of the member state at the EU's external border while wave-through policies do this by encouraging asylum seekers, who arrived on the territory of the member state at the EU's external border, to move onward to other member states.

¹⁵³ This is not to say that an overburdened asylum system cannot have played any role for why member states at the EU's external border would adopt policies that aim at avoiding further hosting duties. In the short-term it might indeed be the case that member states at the EU's external border would feel the need to adopt policies that aim at preventing further hosting duties in order to avoid that their asylum systems would become overburdened. This argument would not hold in the long-term however because in that case member states can simply channel new resources to the asylum system if they would be willing to host these asylum seekers. Since in this chapter I focus on a policy trend with a longer time horizon (i.e. 2014-2020), I opt to adopt a framework based on hosting policy preferences.

U reflects the utility level of the member state and R the number of refugees that is hosted in the member state. The rationale behind this utility function is that a state may wish to contribute to the international refugee protection regime by hosting refugees, but becomes increasingly intolerant for accepting new hosting responsibilities if the number of refugees that needs to be hosted in the member state increases (Hatton, 2017, p.484). An intuitive way to interpret this is that anti-refugee sentiment grows in a member state if the number of refugees that this member state needs to host grows. α and γ are coefficients that reflect the extent to which hosting a refugee yields benefits or poses costs. The higher the value of these coefficients, the more benefits a hosted refugee yields (i.e. a greater α) or the more costs a hosted refugee poses (i.e. a greater γ).

By taking the first derivative of equation 2 to R , setting it equal to 0 and solving for R it is rather straightforward to find the level of hosting duties that a state ideally would like to accept.

$$R^* = \frac{\alpha}{2\gamma} \quad (3)$$

The number of refugees that a state would like to host is positive as long $\alpha > 0$ and $\gamma > 0$. Equation 3 indicates that member states would like to bear hosting responsibilities up to level R^* (this is the threshold after which a state will increasingly oppose further hosting duties). If a state needs to bear hosting duties beyond R^* , then it would prefer that the level of hosting duties decreases. For this reason, I refer to a situation of excessive hosting duties when the level of hosting duties (R) exceeds the optimal level of hosting duties (R^*).

Finally, it is important to mention that I adopt a black box approach with respect to a member state's policy preferences. It means that I take a member state's policy preferences as given and do not look at how these are shaped. In section 8, I will however outline the limitations of the black box approach and evaluate to what extent it influences the findings of this chapter.

5.2. Important factors that influence a state's tolerance to host new refugees

There are different factors that influence the number of refugees that a state ideally wants to host (i.e. factors that change the value of R^*). I focus on two important ones: the extent to which a state deems the international refugee protection regime as important and the expected composition of the refugees that the state needs to host.

The importance that the citizens of the member state attach to international refugee protection

If a state deems it more important that people in need of international refugee protection are able to find a safe haven, then it is willing to accept a larger number of hosting responsibilities. R^* increases thus if a state attaches greater importance to the international refugee protection regime.

The composition of the refugees that needs to be hosted: the economic and cultural impact

R^* also depends on the economic and cultural impact that refugees, who are hosted in a state, have on the host state. The assumption behind equation 2 is that a state becomes increasingly hesitant to accept further hosting duties if it needs to host a larger number of refugees. The background of the refugees that need to be hosted is likely to matter for the extent to which a state is willing to accept hosting duties. The more negative the economic and / or cultural impact of the hosted refugees, the fewer refugees a state would like to host.¹⁵⁴ Refugees might pose a negative economic impact if they need to rely on the welfare state of the host state while they involve a negative cultural impact if there are many cultural gaps between the hosted refugees and the domestic population.

In a recent article Rodrik (2018) explains that an increasing number of people in developed countries has become susceptible for political messages that emphasise that people from a different cultural or ethnic background are seen as a threat to society. It explains the rise of right-wing populist parties in the developed states (Rydgren, 2017). A distinctive feature of these parties is that they voice a nationalist message and oppose further globalisation forces like free trade and immigration. Rodrik's explanation behind this trend is that, despite the fact that globalisation has brought growth to practically all developed countries in the world, not everyone in these developed states has benefited from this growth and therefore feels left behind. The consequence of this development is that the host state is less willing to accept hosting duties for refugees with a different ethnic background. The composition of the group of refugees that a member state needs to host becomes therefore more important for the extent to which a state is willing to accept new hosting responsibilities.

6. An approximation of the development of Italian hosting duties (2009-2020)

The theoretical framework predicts that member states will adopt new forms of policies that aim at avoiding new hosting duties if the number of refugees that they need to host threatens to or goes beyond their optimal level of hosting duties. To see whether this can offer an explanation for the increasingly restrictive Italian policy stance to avoid further irregular arrivals between 2014 and 2020 it is important to have a look at the development of Italian hosting duties.

¹⁵⁴ See Bisin and Zanella (2017, p.420-422) for the distinction between the economic and cultural impact of hosting refugees.

6.1. The long-term nature of hosting duties

In the context of hosting duties it is important to understand that hosting duties (usually) imply a long-term obligation for member states. It means that if asylum claims of asylum seekers are accepted, they will (usually) receive international refugee protection for several years. The reason is that following the non-refoulement principle they can only be returned to their state of origin if this state is deemed as safe. The number of refugees that a member state currently hosts depends therefore strongly on the number of refugees that the member state hosted one year ago. For this reason, the level of hosting duties at a certain point in time ($t + 1$) should be calculated in the following way.

$$R_{t+1} = R_t + inflow_t - outflow_t \quad (4)$$

R_t and R_{t+1} denote stock variables while $inflow_t$ and $outflow_t$ are flow variables. A stock variable is a quantity measured at a specific moment in time (e.g. 01/01/2021). In contrast, a flow variable is a quantity that is measured over a time interval (e.g. the period between 01/01/2020 and 01/01/2021). The annual number of accepted asylum applications can be considered as a flow variable by representing the inflow of new hosting duties during a year. The outflow refers to the number of refugees that have left the member state by moving back to their state of origin or by moving to another (member) during a year. The stock of hosting duties at time $t + 1$ is thus determined by adding the inflow of new hosting duties and subtracting the outflow of current hosting duties from the stock of hosting duties at time t .¹⁵⁵

It should be noted that for the approximation of the Italian hosting duties between 2009 and 2020 I will not make any statistical inferences. For every year I will calculate the level of hosting duties by using equation 4. This does not involve more than a simple calculation exercise. I will provide the exact calculations in the appendix.

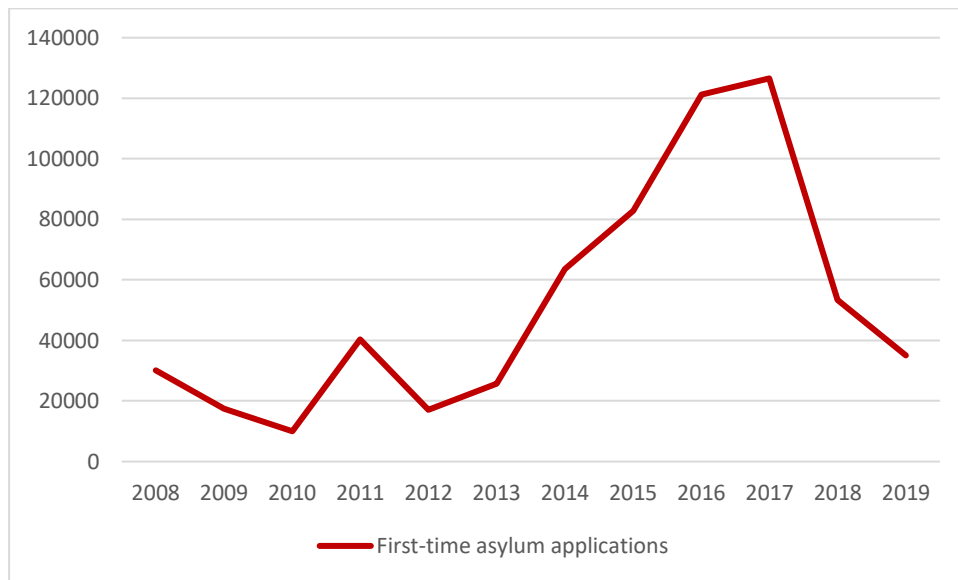
6.2. The annual inflow of hosting duties

The inflow of hosting duties in a year is the number of asylum applications that has been granted in a year. The annual number of accepted asylum claims depends strongly on the number of asylum applications that have been launched in Italy. Figure 8 shows the annual number of first time asylum applications in Italy between 2008 and 2019. It is possible to distinguish between three phases. In the first phase (2008 - 2013) a relatively low number of asylum seekers applied for asylum in Italy with an average number of annual asylum applications of around 23.000. In the second phase (2014 - 2017)

¹⁵⁵ Imagine that on 01/01/2000 a member state hosts 5.000 refugees. During the year 2000 the member state accepts 500 new refugees (the inflow) and 200 refugees that it hosted leave the member state (the outflow). The number of refugees that the member state hosts on 01/01/2001 equals in this case to 5.300 refugees.

the number of asylum applications started to substantially increase with an average number of annual asylum applications of around 99.000. In the third phase (2018 – 2019) the number of asylum applications significantly reduced again with an average number of annual asylum applications of around 44.000.

Figure 8: the annual number of asylum applications and assessed asylum claims in Italy (2008-2019)



Source: Eurostat, "Asylum and first time asylum applicants by citizenship, age and sex - annual aggregated data (rounded)" (online data code: MIGR_ASYAPPCTZA).

Since an asylum procedure takes time, the annual number of accepted asylum claims follows a similar pattern as the number of asylum applications but delayed. In table 4 I provide the average of the annual number of accepted asylum claims during the three phases (I use a one year delay as compared to the phases that I identified for the annual number of first time asylum applications). Not surprisingly the table confirms that an increase in the number of first-time asylum applications indeed contributes to an increase in the number of accepted asylum claims.¹⁵⁶

¹⁵⁶ Another interesting development that can be inferred from table 4 is that the fraction of accepted asylum claims declines from approximately $\frac{1}{2}$ in phase 1 to roughly $\frac{1}{3}$ in phase 2 (and remains stable in phase 3). This change can be a consequence of different factors. It might for instance be that Italy started to adopt a more restrictive interpretation of who qualifies as a refugee from the second phase onwards in order to increasingly deter asylum seekers from applying for asylum in Italy. An alternative explanation might be that the type of asylum seekers that applied for asylum in Italy is different in the different phases. If in a period more asylum seekers with weaker claims apply for asylum for Italy, it is only logical that less asylum claims are rewarded during this period.

Table 4: the three phases of asylum applications and accepted asylum claims between 2009 and 2020		
	Average annual number of asylum applications	Average annual number of accepted asylum claims
Phase 1 2008-2013 (for the asylum applications) 2009-2014 (for the accepted asylum duties)	23.000	12.917
Phase 2 2014-2017 (for the asylum applications) 2015-2018 (for the accepted asylum duties)	99.000	31.871
Phase 3 2018-2019 (for the asylum applications) 2019-2020 (for the accepted asylum duties)	44.000	14.980
Source: Eurostat, "Asylum and first time asylum applicants by citizenship, age and sex - annual aggregated data (rounded)" (online data code: MIGR_ASYAPPCTZA) and "First instance decisions on asylum applications by type of decision - annual aggregated data" (online data code: TPS00192).		

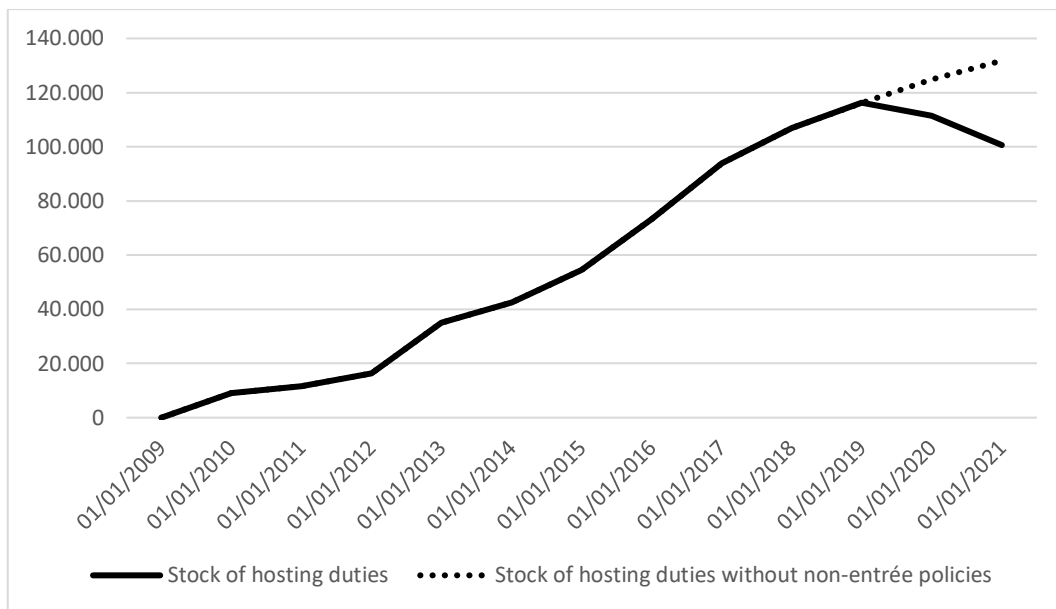
6.3. The annual outflow of hosting duties

A member state's hosting responsibility towards recognised refugees ceases after they have returned to their state of origin or after they have moved to another (member) state. There is only Eurostat data available on the annual number of mandatory returns for TCNs irregularly residing on EU territory. This data is not very precise for the annual outflow of hosting duties, however. It includes the return of every person that is irregularly present on the territory of an EU member state, which is more broad than only the returns of refugees after they can be returned. Furthermore it does not include voluntary returns of refugees to their state of origin or refugees moving to another (member) state. Given these data limitations, I opt for the assumption that every year 20% of the level of hosting duties in the previous year flows out. This is the baseline scenario. However, when I perform the same analysis with a return rate of 10% and 30%, the development of hosting duties exhibits very much the same pattern (see appendix figure A1.1).

6.4. An approximation of the development of the level hosting duties

Based on the information in subsections 6.1. to 6.3., it is a relatively simple task to approach the expected development of hosting duties from 2009 to 2020 (see figure 9 and the appendix for the calculations). Since the level of hosting duties is a stock variable it reflects a quantity at a specific moment in time. For this reason, I report the level of hosting duties at January 1st of every year.

Figure 9: the estimated development of hosting duties (2009-2020)



Source: own calculations (see appendix)

The figure shows that the level of hosting duties has constantly been increasing during the first and the second phase (from 2010 to 2018. Note that 01/01/2019 reflects the level of hosting duties at the end of 2018) and only starts to decrease in the third phase (2019 and 2020)). Only in 2019 and 2020 does the outflow of hosting duties exceed the inflow. The fact that in this last phase the outflow exceeds the inflow of hosting duties is to be explained by the strong reduction of the inflow of new hosting duties during these years as a result of the drop in asylum applications in 2018 and 2019 (the third phase, see table 4).¹⁵⁷

6.5. The adoption of non-entrée policies to manage the level of hosting duties?

The series of policies that Italy adopted to avoid further irregular arrivals on its territory mainly became successful from 2018 onward (see figure 4 in the introduction of this chapter). This is likely one of the main explanatory factors why the number of asylum applications also reduced during this same period. The policies seem therefore to play a key role in putting a halt to the further accumulation of hosting duties. A relevant question is whether it was the goal of these Italian policies to limit the inflow of hosting duties or whether it was merely a side-effect. Since it is not an easy task to establish the true motivation behind the adoption of policies, it is also a question that is difficult to answer with certainty. The analysis that I undertook in this chapter hints however strongly at that

¹⁵⁷ Remember that on average there is a gap of 1 year between the time that an asylum application is filed and when the asylum claim is accepted.

stemming the accumulation of hosting duties probably has been one of the goals of the Italian policies to avoid further arrivals of irregular migrants on its territory.

Under the assumption that poses that a member state generally wants to contribute to the international refugee protection regime by hosting refugees but that it becomes increasingly intolerant to accept further hosting duties if the number of refugees that it has to host grows, Italy will increasingly want to avoid new hosting duties if the number of refugees it needs to host grows. The approximation of the development of hosting duties indicates that hosting duties have been accumulating continuously from 2009 to 2018. A logical conclusion from this observation combined with the assumption would be that Italy has probably become increasingly hesitant to accept new hosting duties during this period as the level of hosting duties kept increasing. The reason is that even if the hosting duties had not reached Italy's optimal level of hosting duties yet it likely would have soon. To provide a rough indication of what would have happened if Italy had not adopted the policies to stem the further inflow of hosting duties, I furthermore added a dashed line in figure 9 to show what would have happened if the annual inflow of hosting duties (i.e. the annual number of accepted asylum claims) in the third period (2019-2020) would have continued on the same pace as in the average year of the second period (2015-2018)). Based on this analysis it would therefore not be strange that from 2015 onward (the start the disengagement of SAR provision) and especially after 2017 (the start of the criminalisation of SAR provision by NGOs and increased collaboration with Libya) Italy would have wanted to adopt policies to avoid a further expansion of hosting duties.

7. The problem of a functioning Dublin system

7.1. The better functioning Dublin system after the 2015/2016 EU Asylum Crisis

In the aftermath of the 2015/2016 EU Asylum Crisis the Dublin system most likely started to function better as a consequence of two factors. Firstly, the main member states of destination of the secondary movements closed their internal borders. This makes it more difficult for migrants to move onward to other member states. At the time of writing many of these borders are still closed.¹⁵⁸ Secondly, the EU has spent a significant amount of resources to ensure the proper application of the Dublin system. The EU actively targeted the wave-through approach by assisting member states at the EU's external border to develop an effective external border management system and an asylum system that meets the minimum EU asylum standard. If asylum seekers move onward, it becomes therefore more likely that they will be transferred back. It also means that even if the Schengen Area

¹⁵⁸ See section 1 of chapter 1.

functions as it should and all internal border controls are lifted, it will be more difficult for asylum seekers to successfully move to another member state than their member state of first arrival.

7.2. The Dublin paradox

The better the Dublin system functions the more likely it is that asylum seekers, who arrive in an irregular manner, are hosted in their member state of first arrival. The consequence of a better functioning Dublin system is therefore that there is a stronger link between the number of irregular arrivals in Italy and the number of asylum applications in Italy. Hosting duties will therefore accumulate more strongly in a period of a high number of irregular arrivals on the territory of a member state at the EU's external border if the Dublin system functions well. If there is a sequence of years of a high number of irregular arrivals, then the level of hosting duties will therefore have increased much more strongly in a situation where the Dublin system functions well, compared to a situation in which the Dublin system functions less well. Provided the assumption that a member state generally wants to contribute to the international refugee protection regime by hosting refugees but that it becomes increasingly intolerant to accept further hosting duties if the number of refugees that it has to host grows, it means that the better the Dublin system functions the more likely it is that member states at the EU's external border will adopt new forms of non-entrée policies to limit the inflow of hosting duties. The rationale is simple. If it is more difficult for arriving refugees to leave through the back door of a member state at the EU's external border, these member states are more inclined instead to close their front door to prevent asylum seekers from accessing.

8. The black box assumption: a problem?

In this dissertation, I adopt a black box approach in the sense that I assume that member states have certain policy preferences and that member states use policies (for instance non-entrée policies) to manage their level of hosting duties. It means that in my analysis I discard political developments within the member state and that I simply assume that member states want to contribute to the international refugee protection regime by hosting refugees but that they become increasingly intolerant for new hosting responsibilities if the number of refugees that they need to host increases.

If I open this black box, then this assumption would generally likely still hold. The rationale would be that be that if the number of refugees that is hosted in a member state grows, there is increasing pressure from society on its government not to accept further hosting duties. Since policy preferences are heterogenous within a member state's society, this assumption implicitly involves that the power of the interest group that opposes further hosting duties grows if in the number of refugees that is hosted in the member state increases. According to Ghezelbash (2020, p.6) it is usually far-right parties that voice anti-asylum campaigns which are co-opted by centre and left parties if they understand that

they can win votes by taking a more anti-asylum stance as well. In the context of Italy, this pattern seems to hold as well. Consistent with the overview of the policies adopted by Italy with respect to SAR provision in the Central Mediterranean, Dennison and Geddes (2021) document that Italian migration policies became already more restrictive before the far-right Lega Party entered the Italian government in 2018. In fact, it was the centre-left government with Marco Minniti of the Democratic Party as Minister of Home Affairs that introduced for instance the Code of Conduct for NGOs and closed the Libya deal.

This does not however mean that it does not matter who is in power for the type of policies that is adopted. It is likely that for a given level of hosting duties it matters whether a far-right party or a centre / left party is in power. Following the observation by Rydgren (2017) that far-right wing parties usually draw votes from citizens that emphasise the importance of the national identity, it is to be expected that if these parties are in power, they will adopt stronger anti-immigration policies than centre or left wing parties would. This is most clearly illustrated by the situation in which the Lega Party was part of the Italian government and Matteo Salvini was Minister of Home Affairs. During this period Italy pursued a policy to actively criminalise NGOs. One of the first things that Lamorgese, the successor of Salvini, did was to put a halt to the no-entry policy whereby NGOs that had rescued migrants at sea could not access Italian ports.

What does this mean for my analysis? Despite the fact that between 2014 and 2020 Italy has had four different coalitions¹⁵⁹ there is a general gradual restrictive policy turn visible. Initially, Italy did not any longer adopt a pro-active attitude towards rescuing people in need of help at sea and after 2017 Italy closed the Italy-Libya deal and became actively involved in policies to oppose effective SAR operations. The latter manifested itself by means of disengagement of Italy in joint-Frontex operations and a criminalisation of SAR services by NGOs. In the period that the Lega Party was in office Italy temporarily harshened its non-entrée policies but it seems that the successor of Salvini (Lamorgese) continues on the same road as the one chosen by his predecessor (Minniti). The Italy – Libya deal is for instance still a key part of Italy's migration policies and NGOs are still urged to comply with the Code of Conduct. It indicates that the analysis that I adopted by choosing a black box is more suitable to detect a general policy trend than to explain the adoption of specific policies.

9. Conclusion

Italy adopted gradually several new policies that aim at obstructing that new irregular migrants are able to arrive on its shores between 2014 and 2020. Since these policies harm migrants' rights to be

¹⁵⁹ Renzi Cabinet (February 2014 – December 2016), Gentiloni Cabinet (December 2016 – June 2018) Conte I cabinet (June 2018 – September 2019) and Conte II cabinet (September 2019 – February 2021).

rescued at sea and protection seekers' access to the EU asylum procedure, it is important to reduce incentives for Italy (and member states at the EU's external border in general) to engage in these policies. This requires that one needs to know why Italy adopted these policies. There might be different factors that play a role. In this chapter, I focused on the role of the Dublin system as a potential factor. As a consequence of that the Dublin system allocates asylum duties based on the authorisation principle, new arrivals of irregular migrants (should) usually entail new asylum duties if new irregular migrants arrive in Italy. It means that a potential motive to obstruct further arrivals of irregular migrants on Italian shores is that Italy wants to avoid new asylum duties.

I used an assumption that Italy wants to contribute to the international refugee protection regime but becomes increasingly intolerant towards further hosting duties if the number of refugees that it has to host increases. By tracking the development of hosting duties between 2009 and 2020 and combining this with the assumption, I analysed whether based on this development of Italian hosting duties there might be a reason that Italy would increasingly oppose further hosting duties between 2014 and 2020. The outcome of the approximation of the development of hosting duties between 2009 and 2020 shows that there is a constant accumulation of hosting duties between 2009 and 2018. In 2019 and 2020 there is no longer an accumulation of hosting duties (the inflow equals the outflow) or there is even a slight deaccumulation (the outflow slightly exceeds the inflow).

Given that policies that make it more difficult for asylum seekers to reach Italian territory reduce the level of hosting duties, the policies to avoid further irregular arrivals on Italian territory will have contributed to halting the further accumulation of hosting duties. The combination of the assumption that I make that Italy becomes increasingly intolerant towards accepting new hosting duties if the number of refugees that it has to host grows, the long period of accumulating hosting duties and the threat that hosting duties would have continued to accumulate if Italy would not have done nothing, suggests that a fear for new hosting duties likely has been one of the reasons behind the increasingly restrictive policy trend between 2014 and 2020.

Chapter 5

The long-term fiscal impact of hosting refugees

1. Introduction

A key assumption behind the analysis in the previous chapters is that member states adopt a combination of wave-through and non-entrée policies for the purpose of preventing an excessive level of asylum responsibilities. Although this assumption seems to align well with state practice, it does not answer why member states at a certain point start to perceive further asylum duties as undesirable. In this chapter, I will focus on an important factor: the (long-term) fiscal impact of hosting a refugee. The goal of this chapter is twofold. Firstly, I aim to offer an understanding of the main drivers of this fiscal impact. This will be useful because it yields important policy recommendations on how member states can improve the fiscal impact that hosted refugees present to their treasury. Secondly, I will also provide a (rough) estimate on the long-term fiscal impact that hosted refugees are likely to present to their host state.

This chapter contributes to answering the second research question: *“Would it be possible to adopt an alternative EU asylum allocation system that is better able to avoid future asylum crises?”* This is for two reasons. Firstly, it informs whether and, if this is the case, why hosting refugees can potentially be fiscally costly for a host state. In this sense, the chapter contributes to evaluating a potentially unfounded assumption that hosting refugees is inherently costly for the treasury of their host state. Secondly, it will shed light on the extent to which the EU asylum allocation system can influence the (long-term) fiscal impact that refugees present to their host state by allocating them in an intelligent manner to the member states.

2. The long-term fiscal impact of hosting immigrants

This chapter firstly looks more closely at the drivers of the fiscal effects of hosting refugees. For this purpose, I will introduce a general framework to assess the main drivers of refugees’ impact on the treasury of their host state. Since most of the literature that I use for constructing this framework focuses on immigrants in general rather than on refugees more specifically, I will also focus on immigrants in general up to the point that the case for refugees is substantially different from the case for immigrants in general.¹⁶⁰

¹⁶⁰ This will be the case from section 4 onwards.

It is impossible to construct a “perfect” model that measures all direct and indirect effects of immigration on the treasury of the host state (Gál, 2019). Since researchers need to make several important methodological choices¹⁶¹, the findings in the literature are highly heterogeneous.¹⁶² For the general framework that I use to identify the main factors that influence refugees’ impact on the treasury of their host state I will rely on a theoretical framework from an IMF discussion paper by Aiyar et al. (2016).

The theoretical framework is based on a distinction between direct and indirect effects of immigration. The direct impact of an immigrant on the treasury is the balance of the taxes paid by the immigrants subtracted by the expenses that the host state needs to make for the immigrant over the time that the immigrant spent in the host state. It is important to notice that not all revenues and expenses are as easy to allocate to individual immigrants. The reason is that, as Rowthorn (2008) argues, not all these costs increase linearly with the number of immigrants. For example, in the case of public goods one additional immigrant will likely not increase the public good expenses of the host state. However, if a large number of immigrants arrives in the host state, then the host state might need to increase its public good expenses accordingly. The indirect impact of immigration on the treasury is the fiscal contribution by natives after the immigrant enters the host state compared to their fiscal contribution if the immigrant had not entered (the counterfactual). As will become clearer later in this chapter, immigration can influence how much natives will contribute to the treasury of the host state.

Based on this distinction Aiyar et al. (2016, p.26-27) identify the main three factors that matter for the long-term fiscal impact of hosting an immigrant. Firstly, the direct impact of immigrants is most likely to be positive the sooner they find employment in their new host state. If they find a job, it functions as a two-edged sword because it increases the revenues received by the host state from the immigrants (through an increase in the taxes paid by the immigrants) while it reduces the expenditures to the immigrants (through a reduction in social benefits received by the immigrants). Secondly, if immigrants find employment this can also have an indirect impact on the treasury as a result of a change in the labour market position of natives. As will become clearer in the next section, this position can both improve or deteriorate. In the case that working conditions deteriorate (for example in the case of displacement effects or lower wages accruing to natives), the indirect effect is negative. This has an impact on the fiscal balance because either tax income from natives decreases (as a

¹⁶¹ It is for example not evident “who is an immigrant” (“is only the immigrant himself counted or also his offspring?”) and “which expenses and revenues to the treasury are taken into account” (“are only direct expenditures to and taxes received from immigrants taken into account or also additional expenditures to and taxes received from natives as a consequence of the immigration?”) (Gál, 2019).

¹⁶² For excellent literature review see for example Rowthorn (2008), Preston (2014) and Vargas-Silva (2015).

consequence of lower wages) or expenditures to natives increases (as a consequence of displacement effects). Thirdly, the generosity of the social benefit system has an impact if immigrants remain unemployed or if they push natives into unemployment. In these situations, a more generous social benefit system has a magnifying influence on the treasury. In sum, these three factors imply that the fiscal impact of immigration depends on a variety of interacting factors¹⁶³ and, therefore, the impact will most likely be different in different host states, for different groups of immigrants at different points in time. Rowthorn (2008, p. 568) illustrates this in a concise and clear manner:

“The fiscal impact of immigration depends on the types of immigrant concerned and their manner of insertion into the local economy. Highly educated, skilled or talented immigrants, provided they get suitable employment and do not displace native works, normally make a positive contribution.”

3. The labour market effects of immigration: the desirability of employment?

Based on the findings from the previous section, immigrants’ success in the labour market can theoretically both improve or deteriorate the long-term fiscal impact that immigrants have on the treasury of their host state. As long as the direct impact dominates the indirect impact, it is positive for the fiscal balance of the host state that hosted immigrants find a job (obviously the opposite applies if the indirect impact dominates the direct impact). For this purpose it is important to have a better understanding of the extent to which immigrants, who enter the labour market of the host state, influence the labour market position of native workers and more specifically the labour market position of the average native worker. There is extensive economic literature that analyses the effect of immigration on the labour market position of natives. Importantly, as the article by Dustmann et al. (2016) *“the impact of immigration: why do studies reach such different results”* indicates, the findings in this literature are not homogenous. Reasons for this include that scholars continuously have expanded the main theoretical framework that studies the relationship between immigration and the labour market position of native workers and used different empirical specifications in different settings.

I will provide an overview of this extensive literature to better understand the indirect impact of hosting new immigrants (by closely following the literature review by Peri (2016)).¹⁶⁴ He firstly discusses the traditional or canonical model (a partial equilibrium model of the labour market), after which he nuances the findings of this model by reviewing some more recent frameworks (among

¹⁶³ It is important to realise that the factors are not restricted to the three factors identified by the IMF staff report from Aiyar et al. (2016). The argument is that these three factors are key drivers for the fiscal impact of immigration but there can be additional important factors.

¹⁶⁴ But see also the literature review by Edo (2019).

others by using general equilibrium models). It is important to notice that these models all assume a perfect labour market, which means that there are no labour market frictions (Foged et al., 2019). In these models, immigrants compete for jobs that are currently possessed by natives. The consequence of the assumption on the absence of labour market frictions (like frictions arising from labour market institutions or search frictions) is that markets always clear in these models. Market clearance means that, as a consequence of the pricing mechanism, the labour market is always in an equilibrium in which the maximum level of employment in this labour market is reached.¹⁶⁵

A key difference between the labour markets of European countries and the American labour market is that the labour markets in the former are more rigid (see for example Nickell (1997)). This implies that the findings from neo-classical models based on a perfect labour market will not always yield accurate predictions for the European case. Unfortunately, not much research has been done on the impact of immigration in a setting of imperfect labour markets. Therefore, several scholars call for more research in this field (see for example Peri (2016), Edo (2019) and Foged et al. (2019)). For this chapter, even though the assumption of a perfect competitive labour market is too strong for many EU member states, it makes sense nevertheless to review this economic theory based on the perfect competitive labour market model. The reason is that the model based on the perfect labour market yields the greatest negative impact possible on the labour market position of the native workers that are the closest substitutes to the immigrant workers (these are the native workers who suffer most from immigration and therefore have the most legitimate labour market concerns) because labour market frictions usually protect the position of exactly these native workers.¹⁶⁶ In other words, in a world without labour market institutions and search frictions there would be a greater negative impact on their labour market position than is the case in reality. The findings should thus be interpreted as a worst-case scenario.

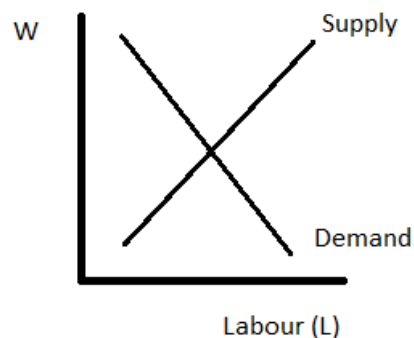
¹⁶⁵ For the equilibrium wage level there are no additional workers willing to work and no employer wants to hire more workers. It means that it is not possible to increase the number of workers in this labour market. For a higher wage level than the equilibrium wage level, more people would like to work but employers would like to hire fewer people. It means that for a higher wage level than the equilibrium wage level, fewer people will be employed compared to the situation of the equilibrium wage level. Similarly, for a lower wage level than the equilibrium wage level, although employers would like to hire more workers, fewer people are willing to work. Again, it implies that fewer people will be employed compared to the equilibrium of the competitive labour market.

¹⁶⁶ As this section will show the main impact on the labour market position of natives because of immigration is a downward pressure on the wage level due to additional competitors in the labour market. Labour market institutions, like a minimum wage, prevent such a downward pressure. Search frictions work in a slightly different way, but with the same result. If immigrants want to enter the labour market of the host state but they do not know where they can find the job, then they will not compete with natives on the labour market. This limits their impact on the labour market.

3.1. The traditional model

There have been several studies that analysed the impact of immigration on the local labour market. The most common way to analyse this from a theoretical perspective is by using a standard demand – supply framework for labour (see for example Borjas (2013, chapter 4)). This is the traditional or canonical model. In this model labour is homogenous. Labour demand refers to the number of workers that a firm would like to hire for a given wage and labour supply refers to the number of people, who are willing to work for a given wage. The figure below sketches this setting:

Figure 10: standard labour demand – labour supply framework



Source: own figure

Although it might be straightforward for an audience of economists, I will start by providing the main idea behind the simple labour supply – demand framework before moving to more recent refinements of this model to complete the picture. This is necessary so that non-economists can follow the main intuition behind the findings in this literature. The traditional model complemented by its refinements will yield some predictions on the impact of immigration on the labour market position of different types of native workers. This can be used to understand the labour market impact on the average native worker.

3.1.1. The labour supply – labour demand framework

I will follow Borjas (2013, chapters 2 and 3) to explain the slopes of the labour supply and labour demand curves. As the figure shows the labour supply curve is upward sloping. It means that the higher the wage the more workers offer themselves on the labour market. Workers opt to offer themselves by trading off leisure and consumption. By working they receive a wage, which they can use for consumption. The cost of working is that they lose leisure. If the wage level increases, there are two opposing effects: an income effect and a substitution effect. On the one hand, a higher wage level implies that a person earns more and therefore would like to have more leisure to use his income (the so-called income effect). In other words, he will prefer to work less. On the other hand, a higher wage level implies that the opportunity costs of leisure increase (the so-called substitution effect). The

standard labour market model usually assumes that the substitution effect dominates the income effect, which means that labour supply increases if the wage level increases.

The labour demand curve is downward sloping: the lower the wage, the more workers an employer would like to hire. The number of workers that an employer (usually a producer, I will use the terms producer and employer interchangeably) would like to hire is determined by the employer's production function. Economic models usually assume that output is produced according to a Cobb-Douglas production function. In these functions output is produced by using a combination of two production factors: capital and labour.¹⁶⁷ Producers choose the amounts of capital and labour they want to use by comparing the benefits of an additional unit with the price of an additional unit. The benefits of an additional unit of labour or capital refer to the additional revenues that this additional unit provides, which is equal to the multiplication of the additional sold output and the output price.¹⁶⁸ Economists call this additional quantity of sold output, as a consequence of the additional unit of supplied capital or labour, the marginal product (the marginal product of capital for an additional unit of capital, the marginal product of labour for an additional unit of labour). A key characteristic of the Cobb-Douglas production function is that the marginal product of labour is increasing in the quantity of capital used in the production process and decreasing in the number of workers.¹⁶⁹ It means that, if other factors are held equal, labour becomes more productive if more capital is used¹⁷⁰ and less productive if more workers are used.¹⁷¹ For the marginal product of capital, the opposite applies.¹⁷² The price of an additional unit of capital, the amount of interest (r) that could have been received on

¹⁶⁷ The traditional Cobb-Douglas production function is $Y = AK^\alpha L^{1-\alpha}$, where Y equals output, A total factor productivity, K the capital stock used in the production process and L the number of labourers used in the production process. Parameter α is between 0 and 1. It is important to notice that a producer only can produce by using a combination of capital and labour. In other words, it cannot produce output by using only capital or only labour.

¹⁶⁸ In economic terms these are called the value of the marginal product of capital and the value of the marginal product of labour.

¹⁶⁹ The marginal product of labour can be found by differentiating the Cobb-Douglas production function with respect to L . This yields $\frac{\partial Y}{\partial L} = A(1 - \alpha)K^\alpha L^{-\alpha} = A(1 - \alpha)\left(\frac{K}{L}\right)^\alpha$. It shows that the marginal product of labour increases as a consequence of an increase in the capital stock used and decreases as a consequence of an increase in the number of labourers used.

¹⁷⁰ As an example, an increase in the capital stock used in the production process would for example be an increase in the number of machines used. Holding the number of workers constant, an increase in the number machines would make it less likely that these workers have to wait before using a machine. This would increase their productivity.

¹⁷¹ As an example, an increase in the number of workers, holding the capital stock used constant, would mean that it becomes more likely that workers have to wait for each other before they can use the machine. This would reduce their productivity.

¹⁷² The marginal product of capital can be found by differentiating the Cobb-Douglas production function with respect to K . This yields $\frac{\partial Y}{\partial K} = A\alpha K^{\alpha-1}L^{1-\alpha} = A\alpha\left(\frac{L}{K}\right)^{1-\alpha}$. It shows the opposite of the marginal product of labour. The marginal product of capital decreases as a consequence of an increase in the capital stock used and increases as a consequence of an increase in the number of labourers used.

the international financial market, is assumed to be fixed while the price of an additional unit of labour, the wage level, is flexible. The rationale is that the interest rate is set on the international market, which cannot be influenced at the national level (Dustmann et al., 2008).

How does this lead to the labour demand curve? The curve basically shows how many workers an employer would like to hire for a given wage level. As hopefully has become clear, the employer will want to hire a worker if the value of the additional output created by this worker exceeds the wage level. The value of additional output created by the worker depends negatively on the number of workers employed by the employer. It means that the wage level, which the employer is willing to pay, holding other things equal, decreases in the number of workers he hires. This explains the downward sloping nature of the labour demand curve. The other factors that influence the value of the additional output created by an additional worker, notably the price of the sold output and the quantity of capital used in the production process, result in shifts of the labour demand curve. If for example more capital is used in the production process, then the productivity of all workers increases. The implication is that, for a given wage level, an employer wants to hire more workers compared to the situation that less capital would have been used. To illustrate this, assume that the employer can sell his output for €5 and the wage level per month is €10. Before the additional investments in the capital stock a worker could produce 1 unit. In this situation the person would not be hired because the additional revenues of the worker ($€5 \times 1$) are less than the wage level of €10. After the additional investments this same worker can produce 3 units a month. Now the employer would like to hire this worker because the additional revenues of this worker ($€5 \times 3$) exceed the salary of €10.

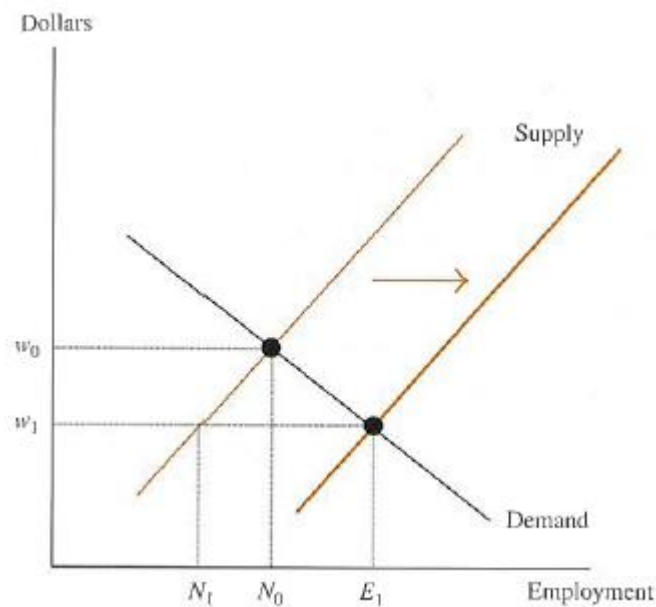
In the labour market equilibrium, the labour demand curve intersects with the labour supply curve. In this equilibrium, it is not possible to increase the number of workers. By increasing the wage level, more workers would like to be employed but the employer would like to hire fewer workers (there would be an excess supply of labour) and by decreasing the wage, the employer would like to hire more workers but fewer workers would like to be employed (there would be excess demand of labour). If there is an equilibrium different from where demand and supply intersect, then the assumption of a perfect competitive labour market is for some reason violated (for example due to search frictions or labour market institutions like a minimum wage).

3.1.2. The effects of immigration on the labour market

Immigrants, who join a state's labour market, have two consequent effects on the labour market: a short and a long-term effect. In the short-term, the capital stock is assumed to be fixed while, in the long-term, it can adjust. I will illustrate both effects by making use of figure 11 (for the short-term effect) and figure 12 (for the long-term effect). In both figures, the equilibrium wage amounts to w_0

and the equilibrium employment level is N_0 before immigration occurs. The immediate impact is that immigrants entering the labour market increase the number of people, who will offer their services on the labour market for a given wage level. It shifts the labour supply curve outwards (the orange line shifts to the right). This will put downward pressure on the wage level because at w_0 the employer can still find workers now. The new equilibrium wage will be w_1 with N_1 number of natives employed and $E_1 - N_1$ number of immigrants. It means that (at least in the short-term) some of the native workers are replaced and the ones that still have a job receive a lower wage.

Figure 11: the short-term impact of immigration on the labour market



Source: Borjas (2013, p.165)

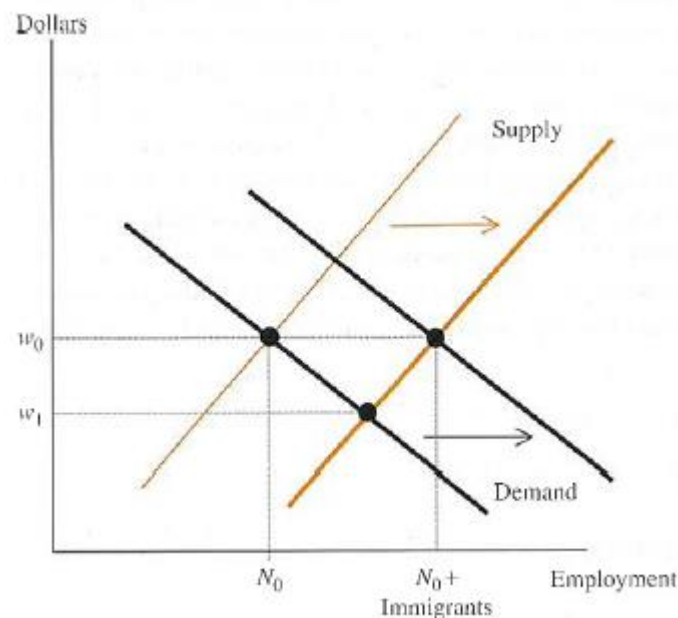
In the long-term, immigration also has an impact on the labour demand curve. In the new short-term equilibrium, the price of labour equals the marginal product of labour because both the price of labour (the wage level) and the number of workers could adjust. This is not the case for the marginal product of capital and the price of capital, however. An increase in the number of workers employed (from N_0 to E_1) increases the marginal product of capital (assuming that other factors are held constant, of interest here is mainly the capital stock). Given that the price of capital is assumed to be fixed¹⁷³ this creates an incentive for investors to increase the capital stock.¹⁷⁴ In the short-term, the capital stock is assumed to be fixed as well though. The thing that changes in the long-term is that this capital stock can change. Since investing in capital yields a higher return than the alternative of investing in the international financial markets, employers will respond by increasing the capital stock. An increase of the capital stock makes on its turn labour a more productive production factor because it increases

¹⁷³ As I already explained the interest rate is assumed to be fixed in this model.

¹⁷⁴ The implication is that an investor can earn a higher return by investing in capital compared to the most attractive alternative of saving on the international financial markets.

the marginal product of labour. As I have explained in a numerical example this makes all workers more productive which makes the labour demand curve shift outwards (for a given wage the producer would like to hire more people). Borjas (2014) finds that this continues until the pre-immigration wage level has been reached. The long-term equilibrium wage will be w_0 and the long-term employment equilibrium will be $N_0 + \text{immigrants}$. In the traditional model there will, in the long-term, thus be no employment and wage consequences of immigrants entering the labour market for native workers.

Figure 12: the long-term impact of immigration on the labour market



Source: Borjas (2013, p. 168)

3.2. More recent developments

Peri (2016) and Edo (2019) argue that afterwards there have been some developments nuancing this finding from the traditional model. I will list two influential contributions: the labour supply is heterogeneous and alternative adjustment mechanisms of the labour market, other than the ones highlighted by the traditional model.

3.2.1. Development 1: Heterogeneous labour supply

The first development is to separate the labour market into a high and a low-skilled labour market and assume that immigrants are only perfectly substitutable in one of these skill-groups. This is usually the low-skilled labour market. It means that it does not matter to the producer whether to hire a low-skilled native or an immigrant. The main insight of this development is that if immigration changes the relative labour supply of high-skilled and low-skilled labour, it has a permanent impact on the wage structure of the country. As Edo et al. (2020) argue the model with heterogeneous labour supply predicts in the long-term a negative impact of immigration on competing native workers while yielding a positive impact on complementary native workers.

The simplest way to understand this is, as in Glitz (2014), with a high-skilled and a low-skilled labour force which are complements in the production process. It means that a producer needs both high and low-skilled labour in order to produce output. Assume furthermore that the immigrants compete with low-skilled labour.¹⁷⁵ Immigration increases in this way the number of low-skilled workers. This yields in the short-term a negative impact on the wage and employment level of the native low-skilled workers. However, since there will be an increase in the total number of low-skilled workers employed, the demand for high-skilled workers will increase due to the complementary nature of high and low-skilled labour. I will use the following example in order to offer a better understanding of this logic. Imagine that immigrants only find employment in the low-skilled construction sector. If new immigrants enter this labour market, then the wage level for low-skilled labourers in the construction sector will fall and total employment in the low-skilled construction sector will increase (i.e. immigrants are substitutes for low skilled labourers in the construction sector). In order to build for example a house one does not only need low-skilled labourers but also high-skilled labourers (like contractors) however. Since more low-skilled labourers are employed due to the lower wages, there is also more demand for high-skilled employment in which immigrants cannot find jobs. Immigrants finding employment in the low-skilled construction sectors create therefore better working conditions for native workers in the high-skilled construction sector because low and high-skilled construction workers are complements rather than substitutes in production.

Borjas (2014) finds that, as in the traditional model, capital will adjust in the long-run. This offsets part of the negative consequences for the native workers, who faced a deterioration of their labour market position. He argues that this will continue up to the point that the labour market position of the average native worker neither improves nor deteriorates. It means that the total pie accruing to native workers neither increases nor decreases. Although immigrants entering the labour market will have a negligible impact on the labour market position of the average native worker, there will be distributional effects however. Native workers, who are the closest substitutes to the immigrants entering the labour market, lose most, and the native workers, who are the strongest complements, gain most.

3.2.2. Development 2: Adjustment mechanisms (beyond the traditional model)

In the traditional model, the labour market initially adjusts by a decreasing wage level and unemployment for some native workers, which is neutralised in the long-term through an increase in the capital stock. Afterwards research has emphasised two alternative adjustment mechanisms: skill

¹⁷⁵ See Borjas (2014) for more a more complicated setting but yielding the same intuition.

adjustments by native workers where they have a comparative advantage compared to migrants (skill upgrading) and technology adjustments by producers.

Native and immigrant workers as imperfect substitutes and skill upgrading

The first development is to drop the assumption that native workers and immigrant workers are perfectly substitutable within the particular-skill group. The reason is that immigrant workers for example have different language abilities and relational skills than native workers and, therefore, they are imperfect rather than perfect substitutes in the low-skilled labour market. Peri and Sparber (2009) find for example that in the US immigrants specialise in manual-intensive jobs while native workers concentrate in communication intensive jobs.

Technology adjustments in the production process

The second development criticises the other approaches since technology strongly influences the optimal amount of labour and capital to produce goods and producers will choose the technology which minimises their costs. It means that immigrants, who enter a state's labour market, can change the optimal technology that producers should use in the production process. The most influential scholar in this field is Lewis (2011, 2013). The idea is that if immigrant workers compete with low-skilled native labour, this production factor becomes relatively abundant and, therefore, cheaper. For producers this can create an incentive to change the type of technology in order to better use the relatively cheap low-skilled labour. This creates more demand for this group and, consequently, better working conditions for low-skilled native workers.

3.3. The impact of immigration on the labour market position of natives: an overview

Here, I summarise the main findings based on the perfect competitive labour market model.

1) The degree of complementarity and substitutability between native and immigrant workers.

In the absence of the alternative adjustment mechanisms, immigration has a negative impact for native workers, who are substitutable by the immigrants, and a positive one, for those who are complementary to the immigrants.

2) The size of the immigration wave.

Although there is no persistent impact of more immigrants entering the labour market on the average native worker, the size of the immigration wave matters for the fact that more competing immigrants yield greater employment and / or wage effects for the individual native worker (again in the absence of alternative adjustment mechanisms): the more competing immigrants there are in the labour market, the greater the deterioration for the

native workers, who are substitutes in production, and the greater the improvement for the native workers, who are complements in production.

3) The potential for alternative adjustment mechanisms.

a. The availability of profitable alternative technology in the production process.

In the case of availability, then part of the negative short-term impact on the substitutable native workers can be annulled or even turned positive.

b. The availability of profitable skill-upgrading opportunities for native workers.

In the case of availability, then part of the negative short-term impact on the substitutable native workers can be annulled or even turned positive.

Glitz (2014, p.10) puts the main conclusion in a nice way: *"The fundamental lesson is that once skills are heterogeneous and native and immigrant workers differ in their skill composition, immigration will have distributional effects in the host economy's labour market, with some groups of native workers – those that are most similar in their skills to the arriving immigrants – losing out to other groups of native workers, those whose skills are most complementary to the skills of the immigrant workers – benefitting in terms of wages and employment. Overall, however, immigration will continue to create a surplus for the native population, on average, better off than before."*

In other words, immigrants entering the labour market will either increase the total pie accruing to native workers or in the worst case keep it equal. In my view, a smart national asylum system should therefore have the same goal as the legal system in general as expressed by Kaplow and Shavell (1994). They argue that the legal system in general should not look at issues of redistribution but leave this to the tax system and focus on maximising the total pie. It means that a smart national asylum system should not include components to protect the labour market position of native workers but instead compensate the native workers, who lose in terms of their labour market position, as a consequence of refugees entering the labour market. In this way, there will be no native worker who (in monetary terms) will lose because of refugees entering the labour market.

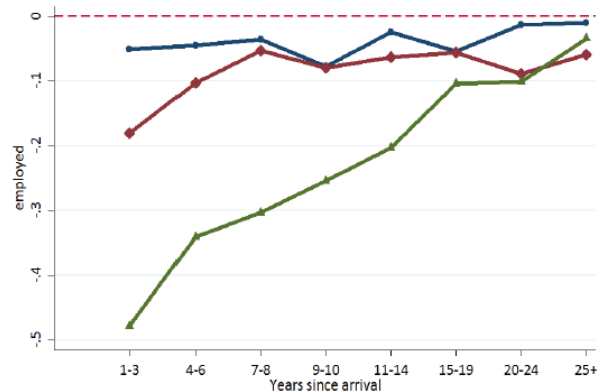
4. The performance of refugees in EU labour markets

Since immigrants entering the labour market of the host state either have a neutral or a positive impact on the labour market position of the average native worker, it can be concluded that it is desirable that refugees manage to find a job in their host state. It is therefore meaningful to look at how refugees have performed in the labour markets of the EU member states in the past and identify factors that promote or inhibit refugees' integration into these labour markets.

4.1. The performance of refugees in EU labour markets

The literature usually considers the employment and the wage gap as the key indicators for the degree of economic integration of immigrants in their host state (see for example De La Rica et al. (2015), Bevelander (2016) and Brell et al. (2020)). It provides an indication of the extent to which refugees are able to compete with natives on the labour market. A common finding in the literature is that refugees generally face a substantial employment and wage gap compared to both other categories of immigrants in the initial years after their arrival (a so-called refugee gap¹⁷⁶ These gaps decrease over time but it is usually a very slow process (see for example Brell et al. (2020)). Fasani et al. (2018) observe the employment gap for a set of European countries over a longer period. In line with the findings by Brell et al. (2020) they observe a substantial initial employment gap, which only 20 years after arrival seems to close with the other categories of immigrants and the gap with natives has not even been closed after 25 years of residence (see figure 13).

Figure 13: the probability of employment of refugees (as compared to natives)



Source: Fasani et al. (2018), figure 2 on page 40

Green line: refugees, blue line: EU immigrants (no refugees), red line: non-EU immigrants (no refugees).

The study uses the ad hoc modules of the European Labour Force Survey from 2008 and 2014. In these modules, the survey asked the migrants what their reason for migration was (employment, study, international protection, etc.). The graph shows the difference in employment probability compared to natives for the different categories conditional on age, gender, education and both years fixed effects and cross-section fixed effects (for the host country)).

4.2. Important determinants of the refugee gap

4.2.1. Three important factors for the performance of an immigrant on the labour market

The performance of immigrants on the labour market depends on several factors. I distinguish between three of them. This is by no means an exclusive list. Firstly, it depends on whether they are allowed to work. Weber (2016) finds for example that in many EU member states asylum seekers are not allowed to work in the first months after their arrival. Secondly, given that they are allowed to

¹⁷⁶ It is important to understand that these methodologies compare similar natives, refugees and other types of immigrants with each other based on a set of observable variables.

work, the extent to which their human capital matches with the needs of labour market of the host state is an important factor. The main example is probably the ability to speak the language of the host country. Dustmann and Fabbri (2003) find for instance that in the United Kingdom immigrants, who are less able to express themselves in English, face worse employment conditions compared to natives and the immigrants possessing better English language skills. However, even if immigrants possess the right skill-set, they sometimes face difficulties to transfer their achieved human capital from the state of origin to the host state because it is difficult for employers in the host state to assess the quality of foreign certifications and work-experience (Damas de Matos and Liebig, 2014). Thirdly, the degree of discrimination in the hiring process influences the immigrant's performance. It is important to distinguish between taste discrimination (Becker, 1957) and statistical discrimination (Phelps, 1972).¹⁷⁷ The former believes that employers have a general distaste for employees from a different ethnic background. The latter instead argues that employers want to hire the best employee (independent of their race) but that they cannot observe the productivity of an individual ex ante. If for whatever reason the average person from a certain racial background is more productive than the average person from another racial background, then the employer can include "race" as an observable characteristic that provides an indication of the productivity of the person.

4.2.2. Important differences between refugees and other categories of immigrants

There are some theoretical developments that explain the initial gap between refugees and other categories of immigrants. All these developments compare refugees with economic migrants. I will focus on three main differences between economic migrants and refugees. These factors basically indicate that the skill-sets of refugees are likely to match to a lesser extent with the needs of the labour market of their host state than the skill-sets of the other categories of immigrants. The last factor moreover also suggests that the average refugee is less motivated to economically integrate than the average economic migrant. Firstly, the primary reason why refugees leave their home country is humanitarian and not economic (Dustmann et al., 2017). This is in contrast with economic migrants, who as Chiswick (1999) argues are more likely to move to a new country for the labour market opportunities there. The implication is that the refugee arrives in the host state with less applicable human capital than the average economic migrant (Brell et al., 2020). Secondly, since the primary motive is not economic for refugees, they are more likely to arrive in the host state in an economic downturn. Dustmann et al. (2010) document that immigrants are more likely to be unemployed than natives at times of an economic downturn because in an economic downturn there is simply less demand for new workers. Economic migrants will thus have a reduced incentive to come to the host

¹⁷⁷ See Arrow (1998) for an overview of the main theories in economics on racial discrimination.

state in an economic downturn because it is less likely that they will find a job in an economic downturn while refugees are more likely to continue coming because they do not primarily migrate for the purpose to find employment in the host state. Thirdly, refugees generally have a worse physical and mental health status (see for example Phillimore (2011)). This can be a consequence both of the fact that economic migrants compared to refugees positively self-select in terms of health and that it is more likely that refugees have been exposed to traumatising events in their state of origin, during their travel to the new host state or even in the host state itself.¹⁷⁸ Phillimore (2011) finds in this context that stress, independent of whether it has been caused before or after arrival in the host state, limits refugees' ability to integrate in their host state.

4.2.3. The main factors that influence refugees' labour market integration: an overview

The overarching finding of the section so far is that, in the absence of discrimination, the key determinants for the performance of refugees on the labour market of the host state are to what extent the skill-set of refugees matches the needs of the labour market of the host state and, if this matches, whether they have the ability to use their skills. It requires that refugees are allowed to work in their host state and employers can recognise their skill level. Brücker et al. (2021) stress in this context the importance of providing formal recognition of immigrants' foreign occupational qualifications because it significantly accelerates the economic integration of immigrants. If the skill-set of a refugee does not match the needs of the labour market of the host state, then (part of) these skills can be acquired through training. Note however that training is not for free and that either the refugees or the host state will need to pay for it. Arendt et al. (2020) find in this context that the returns of a Danish policy to finance language classes to refugees are high due to the fact that it boosts their future employment substantially. Their cost-benefit analysis indicates that the investment in language courses is already at break-even in 5 years.

4.3. Changing labour markets and the impact on refugees' labour market integration

As I pointed out, the extent to which refugees' human capital matches the needs of the labour market of the host is an important explanatory factor for the extent to which refugees successfully manage to integrate in the labour market of their host state. The development of the labour markets in the EU might change the labour market needs in the EU and therefore influence the labour market integration of refugees. An important question is whether the development of EU labour markets favours or disadvantages the labour market integration of refugees.

¹⁷⁸ A study by Hainmueller et al. (2016) suggests that lengthy asylum procedures in the host state might also trigger psychological mechanisms that hamper the economic integration of refugees.

4.3.1. The development of EU labour markets: labour market polarisation

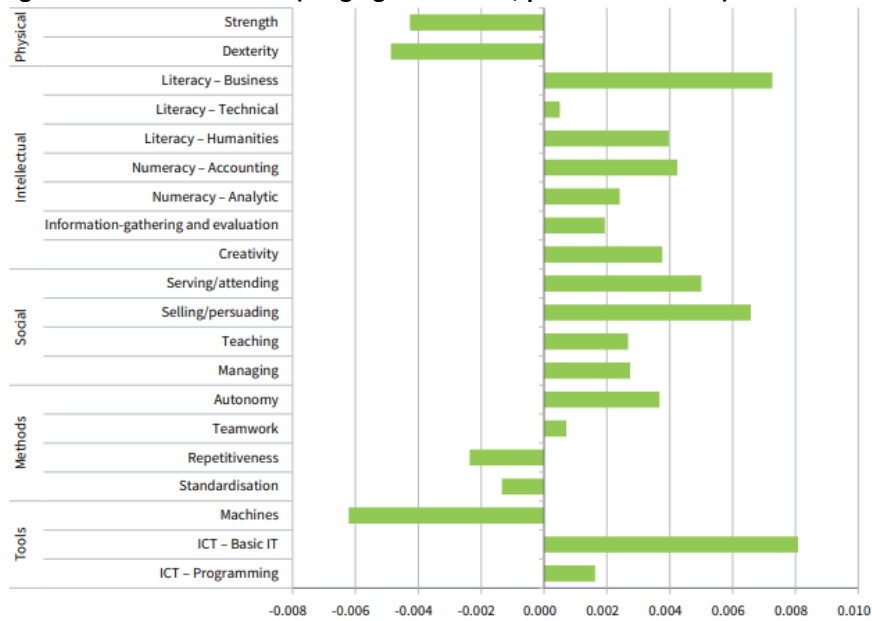
Since the 1980s and 1990s labour market structures have been characterised by polarisation both in the United States (Autor et al., 2006) and in Europe (Goos et al. 2009). Goos and Manning (2007) define labour market polarisation as employment growth in the high and low-skilled occupations and a reduction in the medium-skilled ones. This trend can be explained by the fact that firms will be willing to hire additional workers domestically if this is the most efficient way to create more output. If it is instead more efficient to use more of other production factors, like machines (see the routinisation hypothesis from Autor et al. (2003)) or foreign workers (see the globalisation hypothesis from Blinder (2006)), then a rational firm will opt for those alternatives. In developed states workers most likely wield a comparative advantage in jobs that involve non-routine work and these jobs are found in the low and high segment.

4.3.2. What types of jobs remain?

The EU Agency Eurofound¹⁷⁹ (2018) estimated how the types of tasks that people perform in their job will change in the EU for the period 2018-2030. The approach is based on Eurofound (2016) and distinguishes between tasks measuring the content of the job (physical, intellectual and social) and tasks measuring the methods and tools employed in the job (methods and tools). The projection of the future EU labour markets (see figure 14) shows two important trends: (1) repetitive and standardised work disappears in favour of work entailing more autonomy and (2) social and intellectual tasks become more important compared to physical tasks. The latter finding is consistent with a recent article by Deming (2017), who argues that especially jobs combining intellectual and social tasks have fared well in the recent decades. Eurofound's prognosis of the EU labour markets seems to be supportive of the idea that polarisation will continue because jobs involving social and/or intellectual tasks are, due to their non-repetitive and non-standardised nature, more difficult to automate and/or to move abroad. It means that for these types of jobs it will probably not be cheaper for a producer to use machines or workers abroad than to use native workers. These jobs are therefore more like to remain. Since these jobs are traditionally more likely to be found in the low and high segment, it seems that the polarisation trend will continue.

¹⁷⁹ European Foundation for the Improvement of Living and Working Conditions

Figure 14: changes in the task indices¹⁸⁰ (ranging from 0 to 1, period 2018-2030)



Source: Eurofound (2018)

4.3.3. The implications for refugees

Although all refugees are different with respect to their expertise level and capability to acquire new skills, the development of EU labour markets in favour of social skills at the expense of physical skills means that refugees will most likely need to speak the language of the host state. This implies that country-specific skills will become more important. It implies that it becomes more likely that refugees will need training to acquire these skills before they can participate on the EU labour markets. The development of EU labour markets seems thus not to be in favour of the direct employability of the majority of refugees.

5. The long-term fiscal impact of hosting refugees: a benefit or a cost?

The last part of this chapter aims at providing rough estimates for a set of member states on the fiscal impact that a refugee has on his host state. I do this by developing a theoretical framework that can be used to quantify the long-term fiscal impact that a refugee poses to his host state. This framework specifies the main factors that influence expenditures that the host state needs to pay and income that the host state receives because it hosts the refugee. Consequently, I use data for the selected set of member states to quantify these general factors. In this way, I will have a unique estimate for every member state that is included in the analysis. It should be noted that due to data availability it is

¹⁸⁰ The construction of the index is explained in more detail in Eurofound (2016). The closer the score to 1, the more the task is used in the labour market. The graph shows the change in this index. This means that a decrease implies that the task will be less used in 2030 compared to 2018 while an increase involves the opposite.

necessary to make several assumptions that significantly simplify the real world. The estimates serve therefore only to provide an order of magnitude of the long-term fiscal impact.

5.1. The measurement of the long-term fiscal impact

5.1.1. The theoretical framework

I outline four main factors (based on the analysis in this chapter so far) that influence the extent to which hosted refugees pose a fiscal cost or benefit to their host state:

- 1) The average employment rate of refugees by the number of years after their arrival.
- 2) The tax regime.
- 3) The welfare state regime.
- 4) Overhead costs.

The first three factors closely interact. If a refugee manages to find employment, he contributes to the treasury by paying taxes while if he does not, he poses a burden to the treasury due to the fact that he receives social welfare benefits. The tax regime and the welfare state regime amplify the degree to which a member state is successful in integrating the refugee into his labour market. The higher the tax rate, the more a member state is “rewarded” for successfully integrating the refugee into his labour market while, the more generous the social welfare regime, the more a member state is “punished” for failing to successfully do so. Finally, there is a fourth category that is unrelated to the extent to which the refugee manages to find a job in his host state. This is the overhead costs category. It refers to the fact that if a member state needs to host new refugees, it might need to extend its public goods provision. States spend for instance money on health and education provision. If there are more people using them, states might need to extend their provision (see Rowthorn (2008, p.567) on this point).

5.1.2. The estimation

This results in the following equation to approach a refugee’s fiscal annual contribution to his host state:

$$\text{Annual Net Contribution}_{s,t} = e_{s,t} \times B_s - (1 - e_s) \times C_s - O_s \quad (5)$$

$e_{s,t}$ refers to the probability that the refugee works, B_s to the annual amount of taxes that a working refugee pays, C_s to the annual amount that a non-working refugee receives in the form of social security benefits and O_s to the annual overhead costs that the host state needs to pay independent of whether the refugee works or not. It is important to notice the subscripts t and s in equation 5. The subscript s indicates that the value of a variable is member state dependent (in the sense that it

matters in which member state a refugee is hosted) while the subscript t is time dependent (in the sense that it matters how many years a refugee has already resided in his host state).

All variables have the subscript s . The reason to allow for this heterogeneity across member states is the following. The annual amount of taxes that a working refugee pays in a member state might be heterogeneous across member states because member states use different income tax regimes or working refugees earn more in one member state than in another. Similarly, the annual amount that a non-working refugee receives if he is not working depends on the generosity of the social welfare regime of the member state and member states might be different in how they organise this. Finally, some member states might be providing more public goods than others to their inhabitants and for this reason the overhead costs of hosting a refugee might also be heterogeneous. The probability that a refugee works furthermore also has the subscript t . The reason that this variable has both subscripts is the following. The employment probability might vary across states if some member states are more successful than others in integrating refugees in their labour market. The probability moreover also depends on the number of years that a refugee has already resided in his host state because refugees tend to integrate relatively slowly into the labour market of their host state.¹⁸¹

By using equation (5) I calculate the yearly fiscal impact that a refugee has on the treasury of his host state depending on the member state he is hosted in and the number of years that he already lived in that member state. To calculate the fiscal impact over a longer time frame than a year I simply sum the estimated fiscal impacts of a hosted refugee for a subsequent number of years (I refer to this as the cumulative fiscal impact of a hosted refugee after x number of years of residence in this member state).

5.1.3. The data

I use a variety of data sources to proxy the four identified variables in equation (5). Here I shortly discuss the main data sources (I refer to the appendix for a more precise description).

Firstly, I approach the probability that a refugee works in his host state in a given year (i.e. $e_{ms,t}$) by using data that I extract from an OECD report *“How are refugees faring on the labour market in Europe”* from 2016. This report uses the 2014 European Labour Survey ad hoc module on migrants to assess refugees’ labour market performance in the EU.¹⁸² Unfortunately the report does not provide data on refugees’ average employment rate by the number of years after their arrival on the member state level. Nevertheless I can provide an approximation by using two different data sources from this

¹⁸¹ See section 4 of this chapter.

¹⁸² Given that this reports the labour market performance of refugees in 2014, I also use for the other variables data from the year 2014.

report. The first data source from the report consists of data on refugees' average employment rate by the number of years after their arrival at the EU level.¹⁸³ The second data source from the report provides data on refugees' general employment rates (i.e. without taking into account the number of years after their arrival) at the member state level for eleven member states.¹⁸⁴ The data shows that there are three member states that have employment rates between 40% and 50% (i.e. Belgium, Spain and Finland, I label this category as the member states with low labour market integration success), seven with employment rates between 50% and 60% (i.e. France, Germany, Austria, Portugal, Sweden, Norway and the United Kingdom, I label this category as the member states with medium labour market integration success), and one between 60% and 70% (i.e. Switzerland, I label this category as the member states with high labour market integration success).¹⁸⁵

I use these two data sources to calculate at the member state level the average employment rate of refugees by the number of years after their arrival in the following way. Firstly, I calculated an index that indicates how well every one of the eleven member states managed to integrate its hosted refugees in its labour market relative to the average EU member state (the second data source indicates that the employment rate of refugees in the EU in general amounts to 56%). A member state in which 56% of its hosted refugees work takes a value of 1 but for a member state that for example manages to only employ 55% of its hosted refugees takes a value of $\frac{55}{56} \approx 0,98$. Secondly, I multiply for every member state its index with the average employment rate of refugees in the EU by the number of years after their arrival. The first data source indicates for instance that 25% of the refugees, who have lived between 0 and 4 years in a member state, works. I can thus approach for a member state that has a general employment rate of 55% (irrespective of the number of years after arrival of the refugees) the probability that a refugee works in this member state after having resided between 0 and 4 years in this member state by multiplying 0,98 with 25% (which yields 24.5%). In table 5, I provide an indication of the employment path for member states with a low (45% overall employment rate), medium (55%) or high (65%) labour market integration success.

¹⁸³ See figure 14 on page 21 of the report.

¹⁸⁴ See figure 10 on page 18 of the report. This provides me with information for refugees' employment rates for Switzerland, Italy, Sweden, France, Austria, Germany, Norway, Portugal, United Kingdom, Belgium, Finland and Spain. Croatia and Slovenia are excluded from the analysis because the report warns the reader that the data for these two member states are less reliable.

¹⁸⁵ Note that although Switzerland and Norway are not member states of the EU, they are part of the Schengen Area and the Dublin system.

Table 5: refugees' employment rates by number of years after arrival and labour market integration success				
	Average EU (56%)	Low (45%)	Medium (55%)	High (65%)
0 to 4 years	25%	20%	25%	29%
5 to 9 years	40%	32%	39%	46%
10-14 years	55%	44%	54%	64%
15-19 years	60%	48%	59%	70%
20+ years	65%	52%	64%	75%

Source: own table.
See table A.1. to A.3. in the appendix) for the approximation of the employment path for every of the 11 member states.

Secondly, I approximate the yearly taxes paid by a working refugee (i.e. B_{ms}) by extracting data from the OECD on member states' tax wedge rate and from Eurostat on member states' hourly labour costs.¹⁸⁶ The tax wedge rate is the percentage of an employee's gross wage that goes to taxes and social assistance contributions. A higher tax wedge rate indicates thus that a host state taxes income more heavily. By multiplying a refugee's hourly labour costs in a member state with the tax wedge rate of this member state, I have an estimate of how much of every hour worked by a refugee goes to the treasury of his host state in the form of either social security contributions or paid taxes. By multiplying this number by 2.080 I can find the contribution of a working person to the treasury of the member state on a yearly basis.¹⁸⁷ The data on hourly labour costs as provided by Eurostat reflects the costs for the average employee in the member state however. To account for the fact that refugees are likely to earn less than the average employee because they tend to find jobs that do not require higher levels of education (Barslund et al., 2018, p.2; Konle-Seidl, 2018, p.21), I multiply the annual labour costs with a fraction smaller than 1. Since Salikutluk et al. (2016, p.412) based on German panel data¹⁸⁸ find that refugees on average earn €1.632 per month while natives on average earn €2.597, I opt for a fraction of 0,63 (i.e. $\frac{1.632}{2.597} \approx 0,63$).

Thirdly, I estimate the yearly amount that a non-working refugee receives in his host member state (i.e. C_{ms}) by using the Social Assistance and Minimum Income Protection (SAMIP) dataset. This dataset provides at the member state level the yearly minimum income protection level.¹⁸⁹ This number proxies the annual costs to the treasury for a refugee that is not employed.

¹⁸⁶ Eurostat data on Labour cost levels by NACE Rev. 2 activity (data code: lc_lci_lev) and OECD data on the Tax Wedge (<https://data.oecd.org/tax/tax-wedge.htm>) (Data accessed on 19/06/2021).

¹⁸⁷ If a person works 40 hours per week, then this translates to 2,080 hours worked per year.

¹⁸⁸ Salikutluk et al. (2016) use the IAB-SOEP Migration Sample.

¹⁸⁹ The SAMIP dataset collects the minimum income protection for a single person household without children (MIPsi), for a lone parent type-case (MIPlp) and for a two-parent family type-case (MIPfa). The variable MIPavey provides the average of these three types of households. I use the variable MIPavey. Unfortunately there was no data for Italy with the consequence that Italy needed to be dropped from the analysis.

Fourthly, I use Eurostat data on member states' annual expenditures on public order and security, health care and education.¹⁹⁰ By dividing these amounts by the population size of the corresponding member state, I find how much the member state spends on these three categories for every citizen.¹⁹¹ Under the assumption that these costs increase linearly in the number of people that reside in the member state, this provides an estimate of how much the member state will need to increase his expenditures of these cost categories if it needs to host an additional refugee.

Finally, it is important to notice that all amounts in €'s are in nominal terms. In some member states a € is more valuable than in other member states due to the fact that price levels are not the same in all member states. To mitigate this I use a price index provided by Eurostat to translate the € amounts in nominal terms into € amounts in real terms.¹⁹² The consequence of this transformation into real terms is that the amounts in € terms are more comparable between member states.

5.2. The findings

5.2.1. Significant heterogeneity in the cumulative net fiscal contribution

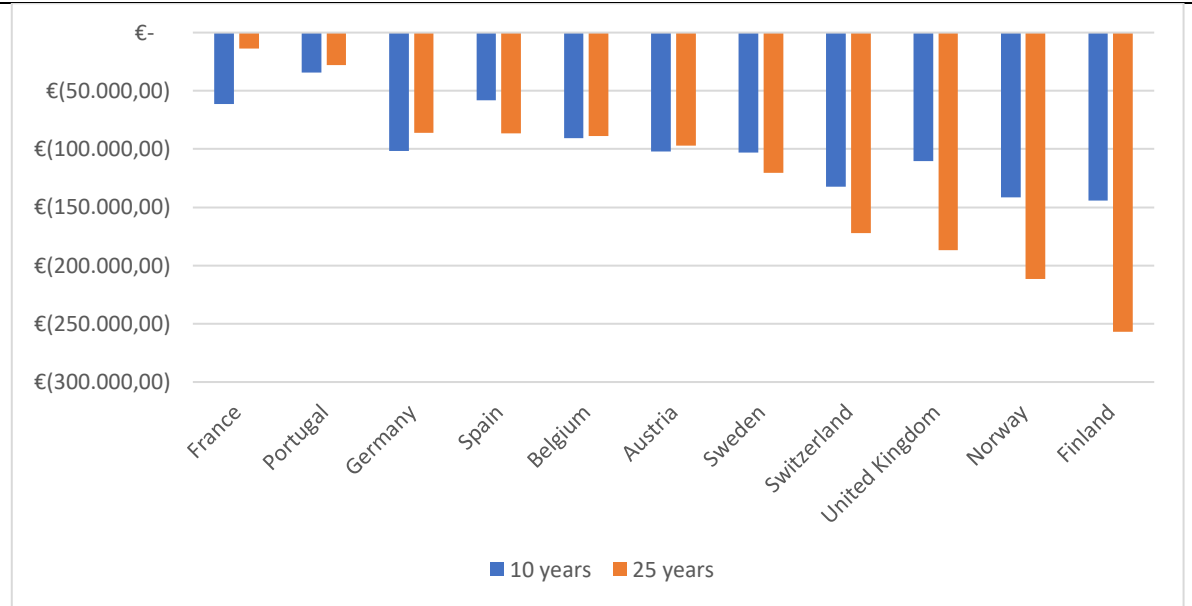
In figure 15, I provide the cumulative net fiscal contribution of a refugee in his host state after both 10 and 25 years of residence. The figure shows two remarkable things. Firstly, In none of the member states included does the average hosted refugee makes a positive cumulative fiscal contribution after both 10 and 25 years. Secondly, there is a remarkable heterogeneity between the member states included after both 10 and 25 years of residence. The heterogeneity widens moreover over time. After 10 years the average refugee has in Portugal (the member state with the least negative cumulative fiscal contribution) for example a cumulative negative contribution of approximately €34.000 while this is more or less €144.000 for Finland (the member state with the most negative cumulative fiscal contribution). After 25 years a refugee has on average a cumulative negative fiscal contribution of around €14.000 in France while an average refugee in Finland yields a cumulative negative contribution of approximately €257.000. The gap between the member state with the least negative cumulative fiscal contribution and the member state with the highest negative cumulative fiscal contribution grew thus from €100.000 for the average refugee with 10 years of residence to €243.000 for the average refugee with 25 years of residence.

¹⁹⁰ Eurostat data on general government expenditure by function (data code: gov_10a_exp) (accessed on: 22/06/2021).

¹⁹¹ Eurostat data on population on 1 January (data code: DEMO_PJAN) (accessed on: 22/06/2021).

¹⁹² Eurostat data on purchasing power parities (PPPs), price level indices and real expenditures (data code: prc_ppp) (accessed on: 24/06/2021).

Figure 15: cumulative fiscal net contribution after 10 and 25 years by member state



Source: own figure.

5.2.2. Zooming in on the heterogeneity: the role of the tax and social welfare regime

The question is what drives the heterogeneous cumulative fiscal impact that refugees pose across EU member states. As I described, my analysis takes into account four factors of which the first three are closely connected. The extent to which refugees find employment in their host state plays an important role for the cumulative fiscal impact that a hosted refugee has on his host state because it “rewards” member states for successfully integrating the refugees in its labour market (through additional tax revenues) and “punishes” member states for failing to do so (through additional social welfare expenditures). Looking at the employment rate alone does not provide a clear picture because of the three member states with low labour market success only Finland belongs to the group of member states with the most negative cumulative fiscal contribution. In contrast, Spain and Belgium perform relatively well compared to many other member states. It is therefore important to look into how member states organise their social welfare and tax systems and to see whether this can shed more light on the significant heterogeneity between member states.

In the appendix (figure A2.1), I provide for every member state the approximated annual fiscal impact that a refugee poses to the treasury of his host state both in the situation that a refugee works and in the situation that a refugee does not work. I use this figure to calculate for every member state the required employment rate of the hosted refugees that would result in the average hosted refugee yielding a break-even impact on the treasury of his host state (I refer to this break-even employment rate as e_{ms}^{be}). The greater the positive annual fiscal impact if a refugees works relative to the negative annual fiscal impact if a refugee does not work, the lower the required break-even employment rate

will be.¹⁹³ I present this information in table 6. Furthermore, I evaluated how many years it took the average refugee in every member state to reach a break-even annual fiscal impact. The average hosted refugee is expected to have a positive annual impact when the expected employment rate (this depends on the number of years after his arrival, see table A2.3. in the appendix) exceeds e_{ms}^{be} .

Table 6: the number of years of residence before a hosted refugee yields a positive annual contribution					
Member state	Annual break-even impact employment rate (e_{ms}^{be})	Number of years residence to reach (e_{ms}^{be})	Member state	Annual break-even impact employment rate (e_{ms}^{be})	Number of years residence to reach e_{ms}^{be}
France	52%	After 10 years	Sweden	66%	After 20 years
Portugal	55%	After 15 years	Switzerland	79%	Not within 25 years
Germany	60%	After 15 years	United Kingdom	78%	Not within 25 years
Spain	52%	Not within 20 years	Norway	74%	Not within 25 years
Belgium	49%	After 15 years	Finland	67%	Not within 25 years
Austria	61%	After 15 years			

Source: own table.

Table 6 provides an indication that there seems to be a link between a member state's break-even employment rate and the ultimate cumulative fiscal impact that the average hosted refugee has after 25 years of residence in this member state. The table clearly indicates that the member states on the left-hand side (the member states that performed better) have lower break-even employment rates than the member states on the right-hand side (the member states that performed worse). As a consequence of that the break-even employment rate is lower, it takes generally fewer years of residence before the average hosted refugee yields a positive annual fiscal impact (the exception is Spain).

The implication is that in the member states on the left hand side of table 6 (except for Spain) the average hosted refugee only poses a negative annual fiscal contribution during the first 10 or 15 years of residence. In the following years the average refugee starts therefore to fiscally contribute in these

¹⁹³ To see this it is insightful to set equation (5) to 0 and solve for e_{ms} :

$$e_s \times B_s - (1 - e_s) \times C_s - O_s = 0.$$

Solving for e_{ms} yields the break-even employment rate in which the average hosted refugee neither presents a cost nor a contribution to the treasury of his host state. This yields:

$$e_{ms}^{be} = \frac{C_s + O_s}{B_s + C_s}$$

From this latter equation follows that if C_{ms} increases (holding B_{ms} equal), then e_{ms}^{be} also increases. If B_{ms} increases (holding C_{ms} equal), then e_{ms}^{be} decreases.

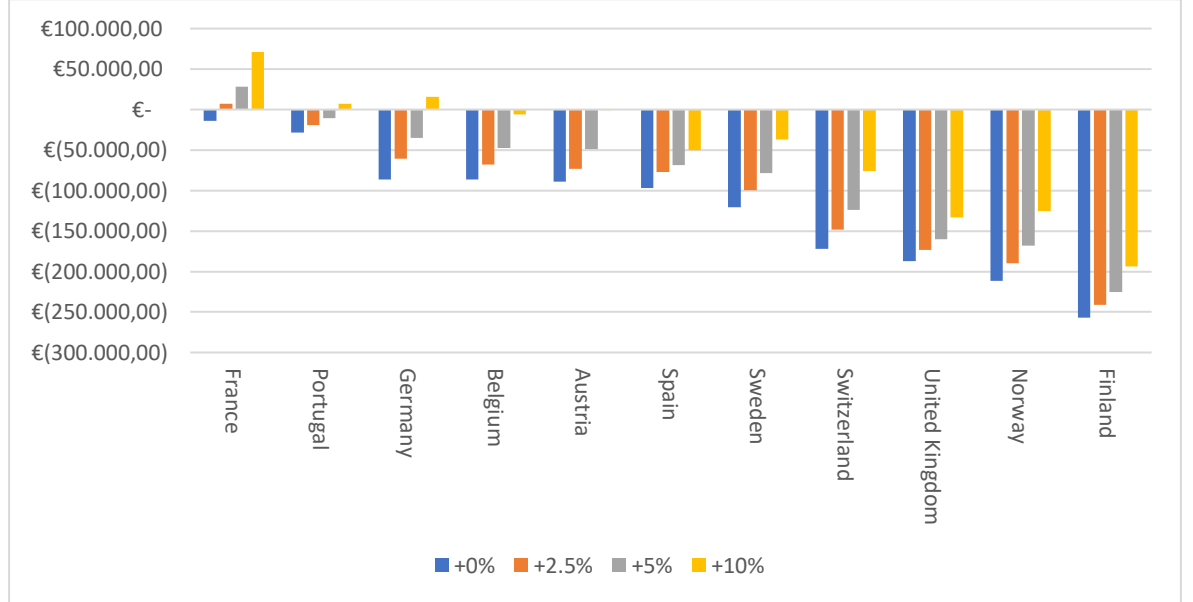
member states and, in this way, reduces the cumulative negative fiscal impact that has been built up in the first 10/15 years of residence. In contrast, for the member states on the right hand side of the table the average refugee only has a positive annual fiscal impact after 20 years of residence or not even within 25 years. It means that negative annual fiscal contributions continue to accumulate for a longer period of time.

It is worthwhile to focus on Spain. Spain is among the better performing member states but the average refugee does not pose a positive annual fiscal contribution within 25 years. If we have a closer look at figure A2.1 in the appendix, then we see that Spain after Portugal is the member state with the least generous social welfare system. It means that in Spain the average hosted refugee poses every year a negative fiscal impact on the treasury but this annual impact is very modest. Negative fiscal contribution of the average hosted refugee in the member states Belgium, Austria and Sweden tend therefore to accumulate on a much faster pace during the first 15 (or respectively 20 years for Sweden) than in Spain. The reason is simply that these member states have more generous social welfare regimes. Although in the next 5 (for Sweden) or respectively 10 years the average hosted refugee yields a positive fiscal contribution that accumulates while in Spain negative fiscal contributions continue to accumulate, it is not enough to bridge the gap that has been created in the first 15 or 20 years of residence.

5.2.3. The impact of improved labour market integration

If a member state manages to better integrate refugees into its labour market, this has a positive impact on the treasury of this member state. It is important to distinguish between improved labour market integration in terms of quantity and in terms of quality. With respect to the quantity I refer to the fact that the member state manages to increase the employment rate of the refugees that it hosts irrespective of the type of employment that the refugee does. This improves the fiscal impact that hosted refugees have on their host state because, instead of paying social welfare benefits to a non-working refugee, the host states will receive tax benefits from a working refugee. In figure 16, I highlighted the cumulative fiscal impact after 25 years of residence if member states manage to increase the employment rate of the refugees that they host.

Figure 16: cumulative fiscal impact after 25 residence years (dependent on % increase in employment rate)



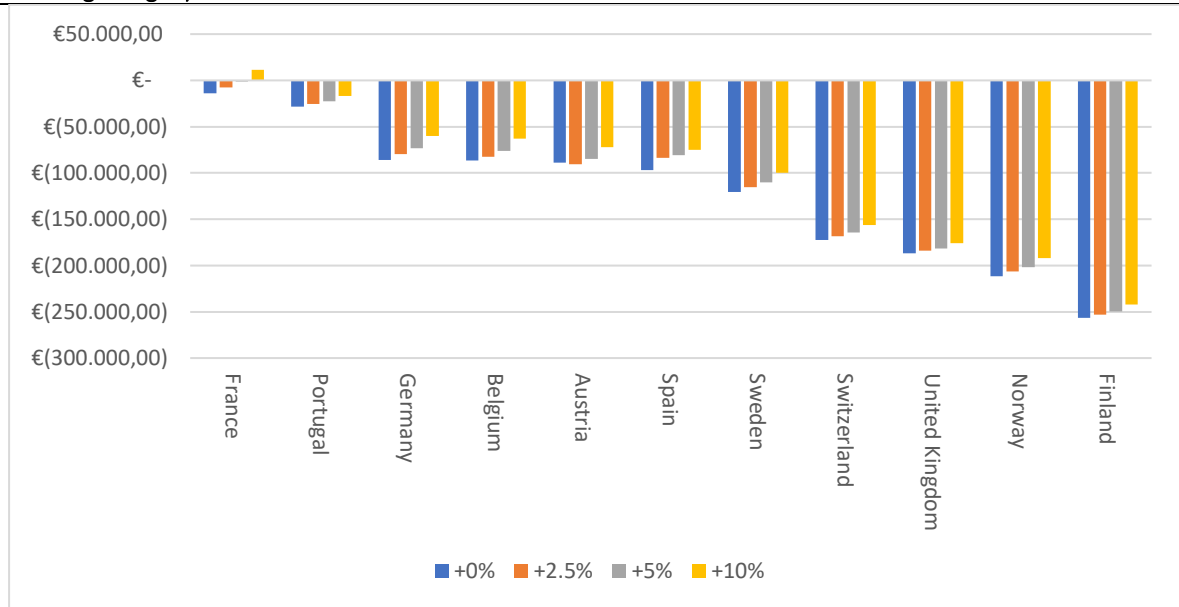
Source: own figure.

In this figure, I increased the probability of employment with 2,5%, 5% or 10%. The case with 0% refers to the situation as in figure 15.

With respect to the quality of refugees' labour market integration I refer to the fact that refugees manage to find jobs that fit better with their labour market skills. Refugees often find, as a consequence of skill downgrading, employment that is below their skill level.¹⁹⁴ It means that refugees usually are employed in the low wage jobs. If the member state manages it so that refugees find jobs that fit better with their skill background, it is likely that these refugees will obtain higher wages and, as a consequence, pay more taxes than if they work in a job that matches less well with their skill background. In figure 17, I highlighted the cumulative fiscal impact after 25 years of residence if the refugees that find employment in their host state manage to find a job that is better paid.

¹⁹⁴ See subsection 4.2. of this chapter.

Figure 17: cumulative fiscal impact after 25 residence years (dependent on % increase in annual income of a working refugee)



Source: own figure.

In this figure, I increased the annual amount of tax paid if a refugee works with 2,5%, 5% or 10%. The case with 0% refers to the situation as in figure 15.

Comparing figures 16 and 17 shows that the cumulative fiscal impact of the average hosted refugee improves both in the case of improved quantitative and in the case of improved qualitative labour market integration. The impact of a quantitative improvement seems to have a significantly greater impact though.

5.3. Shortcomings of the analysis

It is important to mention some factors that put the findings in this section in perspective. Firstly, the analysis is based on experience with refugees from the past. For the refugees' employment rates I need for instance to rely on a report based on the EU Labour Force Survey from 2014. The consequence is that the situation might be different in the future if refugees for instance will have different skill backgrounds compared to refugees that have arrived so far and /or member states use more effective labour market integration policies. In other words, data based on the past is not a guarantee for the future. Secondly, the findings on the fiscal impact of the average hosted refugee are based on that a hosted refugee is in the working age category for at least 25 years. The majority of the refugees that arrived in the EU during the 2015/2016 EU Asylum Crisis was young and male and fits therefore with this qualification.¹⁹⁵ However, if in the future older refugees need to be hosted, then

¹⁹⁵<https://www.pewresearch.org/global/2016/08/02/4-asylum-seeker-demography-young-and-male/> (accessed on 29/06/2021).

the findings in my estimation might be too optimistic. Thirdly, I assume that if a refugee works, he works fulltime. If the refugees that manage to find employment mainly work part-time, then the findings in my analysis might be too optimistic. Pointing out these shortcomings puts the findings into perspective. The implication is that the approximations should only be interpreted as an order of magnitude of the long-term fiscal impact and not as definite numbers.

6. Conclusion

In the first part of the chapter, I started with a general framework that approximates the long-term fiscal impact of a hosted refugee based on his direct and indirect impact on the treasury. The direct impact on the treasury is the balance of the taxes paid by the immigrants subtracted by the expenses that the host state needs to make for the immigrant over the time that the immigrant spent in the host state. The indirect impact on the treasury refers to the change in fiscal contributions by, and fiscal expenditures to, natives as a consequence of a refugee entering the labour market. This framework proves useful to assess whether it is desirable that a hosted refugee works in his host state. The sooner a refugee manages to find employment in his host state the more likely that the direct impact will be positive. The reason is that in that case the refugee pays taxes to the treasury and does not receive social welfare benefits. This positive impact can be neutralised or even annulled however if a working refugee that finds a job replaces a native worker in the labour market. The review of the economic literature on the labour market impact of immigration shows however that labour market conditions of the average native worker tend to improve if a refugee finds a job. Since the indirect impact is thus positive, it means that it is desirable for the treasury that a refugee manages to find a job in his host state.

In the second part of the chapter, I provided an approximation of the long-term fiscal impact of a hosted refugee for a set of member states. The findings indicate that this impact is negative in all member states that are included in the analysis but that there is significant heterogeneity in how costly it is to host a refugee between member states. The analysis underlines the importance of the extent to which hosted refugees manage to find employment in their host state and the interaction with the design of the host state's tax-and social welfare regimes as explanatory factors for this heterogeneity.

The fact that EU labour markets increasingly seem to polarise presents an additional challenge for the future employability of the hosted refugees (due to the fact that social and intellectual tasks become more difficult than physical tasks). It highlights the need to evaluate whether it is possible to adopt a smart EU asylum allocation system to improve the fiscal impact that hosted refugees in the EU have on their host states. The reason is that if refugees have heterogenous skill-sets and member states'

heterogenous labour market needs, then it might be possible for the EU asylum allocation system to improve the labour market integration of the hosted refugees in the EU by allocating refugees to the member states in which refugees' skill-sets match better with the labour market needs of the member state.

Chapter 6

The proposal for a tradable quota system and an attached matching mechanism: its potential, shortcomings and recommendations for its implementation

1. Introduction

It has become clear in the previous chapters that the Dublin system creates incentives for key actors to behave in a way that facilitates the development of future EU asylum crises. A key issue of the Dublin system is that it concentrates all asylum duties in a limited number of member states at the EU's external border. The system creates therefore incentives for these member states to adopt a combination of non-entrée and wave-through policies to avoid becoming responsible for an excessive number of asylum seekers. The former category of policies aims at preventing asylum seekers from arriving at their part of the EU's external border. It increases therefore the risk that future humanitarian crises will develop. The latter category of policies encourages asylum seekers, who managed to arrive at their part of the EU's external border, not to adhere to the EU mobility rules by engaging in a secondary movement to another member state. The fact that asylum seekers by adhering to the EU mobility rules only have very limited opportunities to influence which member state they are hosted in, makes them moreover more prone to the wave-through policies. This combination increases therefore the risk that a new Schengen crisis will develop in the future.

Given the facts that the Dublin system creates incentives for member states to adopt policies that increase the risk that a future Schengen and/or humanitarian crisis will develop and that it is likely to be a difficult task for the European Commission to prevent these policies¹⁹⁶, I will in this chapter focus on the second research question of this dissertation: *“Would it be possible to adopt an alternative EU asylum allocation system that is better able to avoid future asylum crises?”* One of the main problems of the Dublin system is, as hopefully it is clear by now, the fact that it barely provides burden sharing.

¹⁹⁶ As I explained in chapter 2 (section 4) an important component of member states' wave-through policies aims at sabotaging the Dublin transfer system by failing to register arriving asylum seekers or not maintaining the minimum asylum standard on their territory. To prevent these policies the European Commission needs to invest resources in monitoring in order to ensure that member states at the EU's external border comply with their responsibilities under EU law. As I explained in chapter 4 (section 1) (member) states tend to adopt new forms of non-entrée policies if the current forms of non-entrée policies are no longer effective due to new (legal) restrictions (see in this context Gammeltoft-Hansen (2014) and Gammeltoft-Hansen and Hathaway (2015)). Efforts by the European Commission to prevent non-entrée policies will thus likely result in a cat-and-mouse game.

Therefore it comes as no surprise that several well-known scholars have argued that an EU asylum allocation system, which shares the EU's asylum duties in a more equal manner between member states, would function better (see for instance Fernández Huertas-Moraga and Rapoport (2015, p.639), Den Heijer et al. (2016, p.641), Thym (2016, p.1550), Costello and Mouzourakis (2017, p.293-294), Bauböck (2018, p.151-153) and Thielemann (2018, p.79-80)). There are several options for how the EU can arrange more burden-sharing. Probably the simplest option would be to distribute the EU's new asylum duties in a period (e.g. in a year) over the member states based on a distribution key. All member states receive every period a so-called quota (i.e. a number) of new refugees that they need to host and these quotas are filled by randomisation. It means that the filling of the quotas consists of randomly drawing persons from the group of refugees that need to be allocated to the member states in that period. Since, due to the fact both asylum seekers and member states are heterogeneous, it might matter (for instance for integration purposes) which asylum seekers are allocated to which member state, there are some calls to adopt a burden sharing system that is better able to exploit the heterogeneity in both groups.

In this chapter, I will focus on two closely related proposals by Fernández-Huertas Moraga and Rapoport (2014, 2015) and Jones and Teytelboym (2017a, 2017b) to replace the Dublin system for a (tradable) quota system with an attached matching mechanism.¹⁹⁷ These proposals are popular in the literature because they qualify as “smart” burden sharing tools. This is the case for two reasons. Firstly, it allows member states to negotiate (part of) their quotas with each other which allows them to contribute to the EU's new asylum responsibilities in a certain year in the best way they can. If in a certain year a member state does not have the space to physically host refugees, it can try to convince other member states to take responsibility for these asylum seekers in exchange for compensation. Secondly, (after the quota trading has taken place) the matching mechanism fills the quotas by taking into account both asylum seekers' preferences of which member state they would like to be hosted in and member states' priorities on the type of asylum seekers that they would like to host. The matching mechanism aims, in this way, to create better matches than if the final asylum quotas were to be filled by randomisation.

Some scholars have argued that the introduction of a (tradable) quota system might be the optimal way of offering justice to both refugees and host states.¹⁹⁸ If we have a closer look at the two features

¹⁹⁷ Fernández-Huertas Moraga and Rapoport (2014, 2015) call for a tradable quota system and Jones and Teytelboym (2017a, 2017b) for a quota system. Both proposals include the attached matching mechanism.

¹⁹⁸ Betts and Collier (2018, p.217-218) argue for instance that the proposal by Jones and Teytelboym is an example of “how creative institutional design can enable both refugees and host countries to be better off”. Bauböck (2018, p.148-149) argues that the proposal by Fernández-Huertas Moraga and Rapoport “could be the best practical way how to approximate the twin goals of justice for refugees and justice between states” (later

that make the proposals qualify as smart burden-sharing tools and contrast these to the malfunctioning components of the Dublin system that have been identified in this dissertation, then it indeed appears that *prima facie* either of these two proposals would significantly improve the functioning of the CEAS. On the one hand, the trading component ensures that the member states that are in the best position to host refugees will be in this position and the matching component makes it more likely that these member states host the refugees with the characteristics that make them more likely to flourish in their host state. For this reason, it is less likely that individual member states will feel that they are responsible for an excessive level of asylum duties, which reduces the likelihood that they will feel the need to adopt non-entrée and or wave-through policies. On the other hand, the fact that the system provides asylum seekers with the opportunity to express a preference for the member state in which they would like to be hosted, implies that they should be more interested in adhering to the EU mobility rules. This system should thus theoretically create better incentives for both asylum seekers and member states that reduce the risk that EU asylum crises will develop in the future.

Although the proposal by Fernández-Huertas Moraga and Rapoport theoretically finds solutions for some of the main malfunctioning components of the Dublin system, little attention has been given to the practical implementation of the proposal. In this chapter, I focus therefore on this implementation issue. This involves two issues. Firstly, what does it require to organise this system that provides burden sharing in a way that asylum seekers are allocated to member states in this smart manner? This involves an analysis of how the EU can effectively organise this EU asylum allocation system that assigns refugees to member states. Secondly, if asylum seekers are indeed allocated to member states in a this manner, to what extent would a tradable quota system reduce the risk of future asylum crises? Does it mean that incentives of both asylum seekers and member states are automatically perfectly aligned with the goal of preventing future EU asylum crises or might there still be situations that they have incentives to behave in a way that does not align well with this goal. This offers insights on complementary policies that might need to be adopted to prevent future EU asylum crises from developing after the introduction of a tradable quota system.

Importantly, it is not the purpose of this chapter to make a normative claim that a tradable quota system should be adopted. Instead, it provides a positive analysis of what the system solves and what it does not. This will help me to answer the second research question because it enables me to draw more general conclusions on which features of an alternative EU asylum allocation system would

in the article he elaborates further on the desirability of the proposal (p.153-154)). Dustmann et al. (2017, 532-533) finally also explain that the proposal by Fernández-Huertas Moraga and Rapoport is a suitable mechanism to allocate a given number of refugees at the lowest possible cost.

contribute to the goal of preventing future EU asylum crises. Furthermore it is informative for identifying factors that will still need to be resolved after the introduction of such a system.

2. A tradable quota system as a smart burden sharing tool

In this section, I will outline the basics of the proposal to adopt a (tradable) quota system. As I will explain the proposal consists of two components: a tradable quota system and a matching mechanism. With respect to the second component, Fernández-Huertas Moraga and Rapoport remain relatively silent on what it would require to implement such a matching mechanism. Fortunately, Jones and Teytelboym (2017a, 2017b) fill this gap by offering detailed insights on what it would require.

2.1. The basics of a tradable quota system

2.1.1. The preconditions

The EU faces assessment, hosting and return duties as soon as TCNs arrive at the EU's external border and apply for asylum. These duties need to be shared between member states. A tradable quota system is a tool that can be used to distribute a fixed number of people over the different member states.¹⁹⁹ Although Fernández-Huertas Moraga and Rapoport remain silent on the issue of whether the tradable quota system should distribute asylum seekers or refugees, it is an important decision. In the case of the former, the EU spreads duties for asylum seekers between member states. In this case, it allocates asylum seekers to member states. Member states are then responsible for assessing the asylum claim, returning asylum seekers whose claim have been rejected and hosting asylum seekers whose claim have been accepted or prove to be non-returnable. In the case of the latter, the EU adopts a centralised EU asylum and returns procedure. It means that the EU admits asylum seekers, who arrive at the EU's external border, to its asylum procedure and tries to return the ones that do not qualify for asylum status. The hosting duties for all asylum seekers whose asylum claim has been accepted or proved non-returnable in a certain period are then spread across the different member states. Both proposals provide effective burden-sharing compared to the Dublin system.²⁰⁰

¹⁹⁹ Note that this applies to quota systems more generally.

²⁰⁰ Assuming that a distribution key is used that aims to facilitate burden-sharing, a tradable system will spread asylum duties in a more equal manner over the member states both if the asylum assessment and return procedures are organised on the centralised level and if they are organised on the decentralised level. Organising the asylum assessment and the return procedure on the centralised level means that it becomes a duty that is exercised at the EU level. Since the EU is financed by all member states, it means that the costs of the EU asylum and the return procedure will now indirectly be financed by all EU member states. The hosting duties for the refugees will be spread according to the distribution key. Organising the asylum assessment and the returns procedure on the decentralised level will also provide burden-sharing because the distribution key will spread all asylum duties (i.e. asylum assessment, returning rejected asylum seekers and hosting accepted asylum seekers) over the different member states.

In this chapter, I opt to focus on the option to distribute refugees over the member states. There are two reasons. Firstly, it provides an effective solution for the problem in the EU that there remain significant disparities in recognition rates between member states for asylum seekers from the same state of origin (see Toshkov and De Haan (2013)). In this way it prevents that the probability to be accepted is dependent on which member state assesses the claim. Secondly, it is necessary for the matching system that a centralised EU agency needs to take stock of the characteristics of the people that need to be allocated to the member states.²⁰¹ Assessing whether an asylum seeker possesses some important characteristics can be expensive. If the tradable quota system spreads asylum seekers rather than refugees over the different member states, this is likely to result in an unnecessary loss. The reason is that the centralised EU agency needs to assess the characteristics of all asylum seekers while, if the tradable quota system spreads refugees, it would only need to take stock of the characteristics of the asylum seekers that qualify for refugee status or prove to be non-returnable. This is important because asylum seekers that do not qualify for asylum and are returnable are likely to be returned to their state of origin.

Before moving to the tradable quota system it is important to mention that EU law prescribes that families should not be separated.²⁰² It means that the tradable quota system should not distribute individual refugees to the member states but instead recognise family groups. Following the terminology by Jones and Teytelboym (2017b, p.95) families are the units that need to be allocated to the member states and not the individual refugees.

2.1.2. The basics of the tradable quota system: two components

The system consists of two components. The first part consists of a tradeable quota system to share the responsibility to host asylum seeker families that deserve asylum status or are non-returnable²⁰³ over a certain period²⁰⁴ with the participating member states in a way that exploits comparative hosting advantages. A centralised EU agency provides each period an initial allocation of new hosting duties for the participating member states. Every member state receives a so-called initial quota of

²⁰¹ See subsection 2.3.1. of this chapter for more detail.

²⁰² For this reason, the family criteria are the first criteria mentioned in the hierarchy of criteria as established in the Dublin III Regulation (article 8 to 11).

²⁰³ From now on I will refer to asylum seeker families that deserve asylum status or are non-returnable as refugee families. One should thus be aware that this also includes asylum seeker families that do not qualify for international refugee protection but are non-returnable.

²⁰⁴ A quota system can only distribute a fixed number of people. It means that a quota system can allocate refugee families over different member states by distributing the ones that received asylum status in a specific period. For example, the quota system can distribute all refugee families, who received international protection status between January and March in the EU asylum procedure, over the different member states using the distribution key. Then, the same procedure is used for all refugees, who received asylum status between April and June, and so on.

new refugee families that it needs to host. All quotas together in a period add up to all new refugee families that need to be allocated to the member states in that period. This is usually done by using a distribution key. Member states have afterwards the opportunity to trade (part of) their quotas with each other. This leads to final allocation of new hosting duties for every member state in that period. The second part consists of a two-sided matching mechanism that fills these final quota by taking into account member states' priorities on the type of refugee families that the member states would like to host and refugee families' preferences on which member state they would like to be hosted in. This procedure is repeated every period.

An example

Imagine that the CEAS uses a tradable quota system (instead of the Dublin system) to distribute refugees over the participating member states and that in 2021 the EU assessed the asylum claims of 100.000 families (with a 60% acceptance rate). It means that hosting duties for 60.000 families need to be spread over the different member states. The distribution key provides an initial allocation of new hosting duties to the member states by providing an initial quota that every member state needs to host in 2021. Italy would for instance need to host 5.000 new refugee families, Germany 8.000, Austria 5.000, etc. All these quotas together add up to 60.000. By allowing member states to trade part of their quota with other member states, this system has the ability to exploit comparative hosting advantages. A member state that (temporarily) is in a position that it cannot easily absorb many new refugees families into its society, can negotiate with other member states to take charge of part of its quota in exchange for compensation. If the member state finds another member state that is in a better position to host new refugee families, then these member states can strike a deal. Italy can for instance strike a deal with Germany by compensating Germany for taking charge of 2.000 of the families that Italy would need to host. This leads to a final allocation of new hosting duties. Every member state has a final quota of new refugee families that it needs to host in 2021. Italy would need to host 3.000 new refugees while Germany would be responsible for hosting 10.000 new refugees. The matching mechanism fills the final quotas by taking into account heterogeneity in the group of refugee families that need to be allocated to the member states and the group of member states.

2.2. Component 1: The tradeable quota system

2.2.1. A Coasean approach

A tradeable quota system (also referred to as a cap-and-trade system) uses a Coasean approach that aims to ensure that a certain number of refugee families is allocated over the different member states in a way that all comparative hosting advantages are exploited. A well-known application of a

tradeable quota system is the EU Emission Trading System. In this system the EU aims at a maximum emission level in the EU (i.e. the cap) and in order to achieve this it provides tradeable emission permits to companies. By allowing companies to trade these permits, the EU aims to ensure that the emission permits end up in the hands of the companies that use these permits in the most productive way. In the setting of the EU asylum allocation system, a tradable quota system would mean that the EU establishes a fixed number of refugee families that need to be distributed over the different member states. By allocating a quota to host a certain number of these families to every member state, the EU provides an initial distribution of hosting responsibilities to the member states. From the article by Coase (1960) it follows that under certain conditions (more specifically the absence of transaction costs) the final distribution of hosting responsibilities (after the trading of the quotas) will be such that the member states that are in the best position to host new refugee families will ultimately bear the hosting responsibilities for the families to be hosted in that period. It means that the final allocation will prevail independent of the initial allocation of responsibility (Hahn and Stavins, 2011, p.267).²⁰⁵

2.2.2. The quota system

A quota system distributes the responsibility to host refugee families over the different member states in a centralised manner. The system distributes all asylum seeker families that have received international refugee protection in a certain timeframe over the different member states based on a distribution key. The important part is what are the appropriate components of the distribution key. The most commonly cited motivation for a fair distribution key is based on the relative capacity of states to integrate refugees based on their wealth and size (Bauböck, p.144). This implies that a score for all participating member states is calculated based on a combination of their GDP per capita level and their population size (Carens, 2013, p.214-215; Gibney, 2015, p. 456).²⁰⁶ The idea is that member states that are more developed (higher GDP per capita) and have a greater population (greater population size) are better able to integrate refugees. It is important to recall that from the

²⁰⁵ If transaction costs are high and cannot be lowered, then the centralised EU agency could engage in an in-depth analysis on how to precisely allocate asylum responsibility such that it can allocate the asylum responsibilities in a way over the different member states so that all comparative hosting advantages are exploited. This is called the Hobbes theorem (see Cooter and Ulen (2016, p.93-95), the theorem was coined by Cooter (1982)). Since it is possible to design a tradeable quota system in which transaction costs are low, this is not necessary however.

²⁰⁶ The score can be calculated as follows. Imagine an EU consisting of two member states. Member state 1 has a GDP per capita of €30.000 and a population size of 5.000.000 while member state 2 has a GDP per capita of €50.000 and a population size of 15.000.000. The score weighs GDP per capita and population size both for 50%. The score of member state 1 would be $0,5 \times \frac{30.000}{80.000} + 0,5 * \frac{5.000.000}{20.000.000} = 0,3125$ and the score of member state 2 would be $0,5 \times \frac{50.000}{80.000} + 0,5 * \frac{15.000.000}{20.000.000} = 0,6875$. According to this distribution key member state 1 should host 31.25% of the refugee families and member state 2 68.75%. Note that all the numbers in the example just serve to demonstrate how a potential distribution key would work.

Coase theorem it follows that, if transaction costs are low, the choice of distribution key does not matter for the final distribution of refugee families over the different member states. The reason is that under this condition states will continue trading quotas until all comparative hosting advantages are fully exploited.

2.2.3. The trading system

Schuck (1997) introduced the idea of tradeable immigration quotas. In this system, a member state can transfer (part of) its quota to another state in a voluntary transaction (p.283). Member states share as a consequence the responsibility to host all refugee families but can contribute in different ways: by hosting and / or by financing. Hathaway and Neve (1997, p.202-209) call this a system of common but differentiated responsibility. The justification to introduce a system based on tradeable immigration quotas is that member states differ in their willingness to host refugees. By allowing member states to trade their quotas, this system exploits the idea that some member states have a comparative advantage to host refugees compared to other member states (Fernández-Huertas Moraga and Rapoport, 2014, p.95). The reason is that a member state that is willing to host more refugee families than its quota can negotiate with another member state that wants to host fewer refugee families than its quota. The latter can compensate the former for hosting additional refugee families. This voluntary transaction makes both member states better off.

Fernández-Huertas Moraga and Rapoport (2014, p. 98) propose to operate a computerised continuous double auction mechanism in order to guarantee that comparative hosting advantages are fully exploited. In such a system, member states can continuously submit how much they are willing to pay to host a refugee family less (their willingness to pay) and how much they want to receive to take charge of an additional refugee family (their willingness to accept) to a centralised system during the trading period. If a member state offers more than another member state would like to receive to take charge of an additional refugee family, then this centralised system registers this as a deal and responsibility for one refugee family is transferred from the former to the latter member state. Smith (1962) and Friedman and Ostroy (1995) show that such systems, based on a double auction in which actors make repeated bids, approximate a competitive equilibrium even in the case where there is only a limited number of players submitting bids. It means that by using this double auction system transaction costs will be low. Member states will therefore be able to trade with each other up to the point that all comparative hosting advantages have been exploited.

2.3. Component 2: The two-sided matching mechanism

A matching mechanism is a tool that can be used after a shared commitment has been made by a collection of member states to host a certain number of refugee families (Jones and Teytelboym,

2017a, p.94). The quota system distributes this shared commitment of refugee families that need to be hosted over the different member states by allocating a quota of refugee families to every member state. The subsequent trading ensures that member states' comparative hosting advantages are exploited in the final allocation of quotas to member states. The matching mechanism basically fills these final quotas by matching specific refugee families with specific member states (Jones and Teytelboym, 2017b, p.154).

Both Fernández-Huertas Moraga and Rapoport (2014, 2015) and Jones and Teytelboym (2017a, 2017b) advocate in favour of a two-sided matching mechanism that uses an algorithm to match refugee families and member states by taking into account both the preferences of the refugee families (on in which member state they would like to be hosted) and the priorities of member states (on the type of families they would like to host) while respecting member states' final quota allocation.

2.3.1. The input of the two-sided matching mechanism: priority and preference rankings

The input of all two-sided matching mechanisms are the rankings of refugee families' preferences and the member states' priorities. It is important that the matching algorithm can only perform well if all refugee families provide a full ranking of all member states that participate in the system and similarly all member states need to present a full ranking of all refugee families that need to be hosted in the EU.²⁰⁷ Information on the characteristics of all member states is crucial for refugee families to rank them and member states equally need information on the characteristics of the refugee families in order to rank them. This might be problematic because both sides will be inclined to misrepresent themselves as it might increase the probability that they are matched in a way they like (i.e. a refugee family with their preferred member state and a member state with its prioritised refugee family).²⁰⁸

²⁰⁷ It means that member states cannot share the same rank in the ranking of a refugee family. As an example, if a refugee family has to rank three member states, it has to rank all of them by ranking them from 1 to 3 and cannot say that it values member states 1 and 2 equally. The same applies for member states that have to rank the refugee families.

²⁰⁸ Take for example the case of a member state. The member state has a priority to host certain categories of refugee families and will rank these families on high spots in its own priority ranking. However, the two-sided matching mechanism both takes into account member states' priorities and refugee families' preferences when filling the quotas. It means that it is more likely that the mechanism will establish a desired match from the perspective of the member state if the refugee families that the member states would like to host, rank the member state higher. The member state has therefore an incentive to misrepresent some characteristics that the refugee families (the ones that the member state would like to host) appreciate and hide some characteristics that these families do not appreciate. Refugee families obviously might have a similar incentive in order to be ranked higher by the member states that they like.

Refugee families' preference rankings

It seems that asylum seekers have quite precise preferences on in which member state they ideally would like to be hosted. Research shows for instance that asylum seekers are more likely to apply for asylum in member states that are economically better developed, share the same language as their host state or already host a large number of refugees (see e.g. Neumayer (2005) and Hatton (2016)). One should bear in mind that this research shows the choice of asylum seekers on where they ideally would like to be hosted (given the constraints that they face). This is not the same as a complete ordering of all member states, which might be more difficult. Although this might be true, the fact that asylum seekers quite systematically seem to pick their favourite member state indicates that refugees will be able to inform themselves. If necessary the centralised EU agency can also provide information on the member states' characteristics.

Member states' priority rankings

More problematic will be the ability of member states to rank all refugee families that need to be allocated to the different EU member states. There are two key issues: how do member states receive reliable information on which they can base their ranking and, given that the number of refugee families that needs to be ranked can be substantial, how can member states practically rank all of them. According to Jones and Teytelboym (2017a, p.95-96) the use of a points-based system can overcome these problems. In such a system a centralised EU agency provides a list of characteristics that a refugee might possess (e.g. occupational background, language skills, ethnic background, etc.). After a member state provided a certain number of points to every characteristic (note that there is a certain maximum number of points that a member state can provide) and the centralised EU agency verified which of these characteristics every refugee possesses, it is relatively simple to construct a priority ranking of the to be reallocated refugee families for this member state. Combining the information of the characteristics that a refugee possesses and the number of points that a member state allocated to every characteristic yields a certain number of points for this individual refugee in that member state.²⁰⁹ Since member states need to rank refugee families and not individual refugees, the number of points that every individual refugee possesses in a member state should be aggregated to the family level. This could for example be done by taking the average number of points of all family members. In this way, every refugee family has a certain number of points. The final step to construct the priority ranking of a member state simply involves the ordering of all refugee families based on

²⁰⁹ Imagine for instance a points-based system based on two characteristics (A and B). A member state can allocate a maximum of 10 points. Member state 1 allocates 7 points to characteristic A and 3 points to characteristic B. Member state 2 allocates 3 points to characteristic A and 7 points to characteristic B. The centralised EU agency measures that a refugee possesses characteristic A but does not possess characteristic B. In member state 1 this refugee would thus receive 7 points while only 3 points in member state 2.

the number of points that each refugee family has in that member state. The family with the highest number of points takes the first place on the priority ranking of the member state, the family with the second highest number of points takes the second place, etc. If two refugee families have an equal number of points, then a random lottery decides which one of them receives the higher spot on the ranking. If each member state allocates a different number of points to the different characteristics, then every member state will have its unique priority ranking.

2.3.2. The output of the two-sided matching mechanism: the choice of algorithm

There are different types of matching algorithms that can be used and each of them has strengths and weaknesses. It is important to mention that every well-designed algorithm will perform at least as well as a system that randomly fills member states' quotas. The reason is that by randomly filling the quotas it is likely that two refugee families would like to swap places and that the member states to which these families have been allocated to (based on the random matching procedure) would encourage this swap. In other words, all parties benefit from this swap. Swaps like this one can thus be labelled as "*wins which come for free*" (Jones and Teytelboym, 2017b, p.153).²¹⁰

2.4. The compatibility of this proposal with international refugee law

The proposal is compatible with international refugee law. According to the non-refoulement principle asylum seekers cannot be sent to a place where they need to fear for persecution or other degrading circumstances. Under the proposal, as discussed in this section, all asylum seekers are allowed to access the EU's asylum procedure. This procedure establishes whether the transit state or state of origin of the member state can be deemed as safe. As long as the centralised EU agency carries out the EU asylum procedure in a way that corresponds with international asylum standards, there is therefore no reason to fear that asylum seekers will be returned to a state outside of the EU if there is a legitimate reason for concern that the person will face persecution or other degrading circumstances there. In fact, the proposal mainly involves the distribution of hosting duties within the EU for asylum seekers that cannot be returned to their state of origin.

Hosted refugees should furthermore be hosted in a way that meet the minimum international asylum standard. Since EU asylum law is compatible with international refugee law, the proposal is also

²¹⁰ I will highlight two potential matching algorithms that can be used (both algorithms ensure that "*free wins*" are fully exploited): the refugee proposal preferred acceptance algorithm and the top-trading cycle algorithm. The reason is that when refugee families' preferences and member states' priorities are in tension (i.e. "*free wins*" are not feasible anymore), the former gives precedence to member states' priorities while the latter respects refugee families' preferences (Cantillon, 2017, p.620-621). The choice of algorithm can thus be used to prioritise either refugees' preferences or member states' priorities. Note that Cantillon (see the citation before in this footnote) does not focus on matching refugees with member states but instead on matching students with schools. Therefore, she does not refer to the refugee family proposal preferred acceptance algorithm but to the student proposal preferred acceptance algorithm.

compatible with international refugee law if all member states guarantee to host refugees that are allocated to them in a way that at least corresponds with the minimum EU asylum standard. If it has been established that a member state is not able to guarantee this, then it is not possible for other member states to transfer refugees back to this member state (see also Morgades-Gil (2020, p.112) on this point). A solution could be to temporarily exclude this member state from the CEAS and relocate the asylum seekers that were allocated to this member state (and do not want to stay there) to the other member states.²¹¹

2.5. Why is this a system that can provide smart burden-sharing?

2.5.1. A system based on equality and comparative hosting advantages

The EU's asylum duties consist of three types of duties: asylum assessment, hosting and return duties. A tradable quota system ensures that all these three types of duties are shared between member states in a smart way.

The system ensures a more equal distribution of asylum assessment and return duties

Since the EU asylum procedure is centralised, an EU agency would be responsible to assess the asylum applications and return rejected asylum applicants to their state of origin. Since EU agencies are collectively financed by the member states, it means that all member states (indirectly) contribute to these duties.

The system ensures a more equal distribution of hosting duties

Member states share the responsibility to host the asylum seeker families that are either recognised as refugees or prove to be non-returnable. The system does this by using a distribution key that allocates an initial quota of hosting duties to each member state. Importantly the choice of distribution key influences to which extent hosting duties are equally shared between member states.

The system exploits comparative hosting advantages

The system enables member states to share the common responsibility but member states can contribute in different ways (i.e. by directly hosting and / or by contributing financially). Member states that are least able to physically host new families have the opportunity to sell (part of) their quota to other member states that are in a better position. This trading ensures that hosting duties

²¹¹ It should be noted that this can create incentives for member states that do not want to host refugees to offer poor asylum conditions. In this way, they effectively escape from hosting responsibilities. However, if the EU does not offer this opportunity, then there is a risk that these asylum seekers will themselves move to other member states and then they cannot be transferred back anyway. The difference with the solution that I offer is that asylum seekers move to other member states in a more organised way. The solution to provide good incentives for member states not to strategically offer asylum quality that falls below the EU minimum asylum standard is likely to be found in effective monitoring and sanctioning member states who violate the rules, or rewarding member states who comply with them.

ultimately will be allocated to the member states that are in the best position to bear these duties (Dustmann et al., 2017, p.532). A tradable quota system is therefore (provided that they use the same distribution key) better able to prevent excessive hosting duties than a normal quota system.

Member states might in a certain period be in a worse position to physically host the number of refugee families that initially was allocated to them than other member states for two reasons. These member states are generally not willing to host new refugee families or alternatively they might only not be willing to host the type of refugee families that need be reallocated in that period.²¹² In the case of the former one would expect that a member state continues selling its quota for some periods in a row. In contrast, in the case of the latter it might be the case that a member state wants to get rid of its quota in one period but be willing to accept a new quota from other member states in the next period if the background of the refugee families that need to be allocated in that period is different. As long as the centralised EU agency informs member states about the characteristics of the refugee families that need to be allocated to the member states in a period before the member states trade their quota for this period, this system is in every period able to allocate the new hosting responsibilities to the member states in a way that the final quotas end up in the hands of the member states that are in the best position to host these refugee families. The system furthermore increases the likelihood that the quotas of member states are filled with the refugee families they like by allowing member states to state which refugee families they want to host among those of the refugee families to be allocated in a certain period.

3. The design of a points-based system to create priority rankings

Member states will likely face difficulties to rank all refugee families one by one due to the potentially high number of refugee families that would need to be ranked in certain periods. This can be alleviated by using a points-based system.²¹³ The question is how such a points-based system can be implemented in the real world. The main issue is the selection of potential characteristics of refugees that can be used for the points-based system in order to enable member states to define which types of refugee families they would like to host. Two factors are of importance for the choice of these characteristics. Firstly, since the quality of the matches increases if member states hold more heterogeneous priority rankings (Jones and Teytelboym, 2017a, p.163; 2017b, p.99), it is important to choose characteristics that facilitate this. This occurs when member states value refugees'

²¹² As an example for the latter, some member states might have problems in hosting refugees with a Muslim background but they might not have problems with hosting refugees with a Christian background. Member states that have problems hosting Muslims can sell their quota to member states that are more open to hosting refugees with a Muslim background in periods when it is mainly refugees with a Muslim background who need to be allocated to the member states.

²¹³ See subsection 2.3.1. of this chapter.

characteristics differently²¹⁴ and there is heterogeneity in the group of the refugees to be allocated with respect to these characteristics.²¹⁵

Secondly, a points-based system relies on authorities being able to reliably determine which characteristics a refugee possesses (Posner, 2013, p. 303). This might in reality however not be so simple due to the fact that some characteristics might not be easily identifiable for the centralised EU agency. This can create problems as a result of both information asymmetry between the centralised EU agency and refugees and a general lack of information on both sides. In the case of information asymmetry refugees can try to misrepresent themselves by arguing that they possess certain characteristics that gives them more points in their favourite member state.²¹⁶ This is an adverse selection problem. In the case of a general lack of information neither the refugee nor the centralised EU agency know to what extent the refugee possesses certain characteristics. It might for example be the case that a refugee honestly reveals that he obtained a university degree or occupational experience in his state of origin but it is difficult for both the centralised EU agency and the refugee himself to assess the extent to which it is possible to translate the value of this degree or occupational experience to the European setting.

3.1. A proposal for characteristics to be included in the points-based system

As discussed, it is important for the points-based system to identify characteristics of refugees that member states value differently. These characteristics need to be defined so that they are measurable for the centralised EU agency. Furthermore, there needs to be heterogeneity in the group of refugees that need to be allocated to the member states with respect to these characteristics. The question is what are the examples of characteristics that match these criteria.

²¹⁴ If member states value a characteristic in a similar way, it does not make sense to include this characteristic in the points-based system. Imagine for example that there are two refugees, who need to be hosted by either Belgium or The Netherlands. Each member state hosts one refugee and the only relevant criterion for preferring one refugee over the other is the refugee's ability to speak the local language. One of the refugee speaks Dutch while the other one speaks Greek. Both member states will prefer the Dutch speaking refugee because the official language is Dutch in both member states. In this case, the matching mechanism can clearly not exploit the heterogeneity in the characteristics of the refugees. In contrast, if the two refugees need to be allocated to either Belgium or Greece, then the matching mechanism can exploit heterogeneity in the characteristics of the refugees. In the former case it would thus be a waste of resources to measure the refugee's language ability while in the latter case it would yield valuable information.

²¹⁵ If the refugees to be allocated are homogenous with respect to a characteristic, it does not make sense to include this characteristic in the points-based system. Imagine similar to the situation in the previous footnote that Greece wants to host a refugee that speaks Greek but Belgium wants to host a refugee that speaks Dutch. If there are two refugees to be allocated in a period and both speak Dutch, then the language ability does not capture any heterogeneity within the refugee group and would thus not yield valuable information for the points-based system.

²¹⁶ In the more specific matching literature this is referred to as manipulability.

3.1.1. Member states' heterogeneous valuation of the labour market and ethnic background

Economic and cultural factors as important drivers for attitudes towards immigrants

The literature that tries to explain public attitudes towards immigration distinguishes between cultural and economic factors (Dustmann and Preston, 2007; Card et al., 2012). Economic factors refer to the extent to which people believe that further immigration will positively / negatively impact their economic position (either through the impact on their labour market position or on their fiscal position) while cultural factors involve the extent to which people expect that further immigration will positively / negatively change the ethnic composition of the country. Refugees might pose a negative economic impact if they need to rely on the welfare state of the host state while they involve a negative cultural impact if there are many cleavages between the hosted refugees and the domestic population. It is therefore likely that the background of the refugees that a member state needs to host influences the number of refugees that a member state is willing to host.

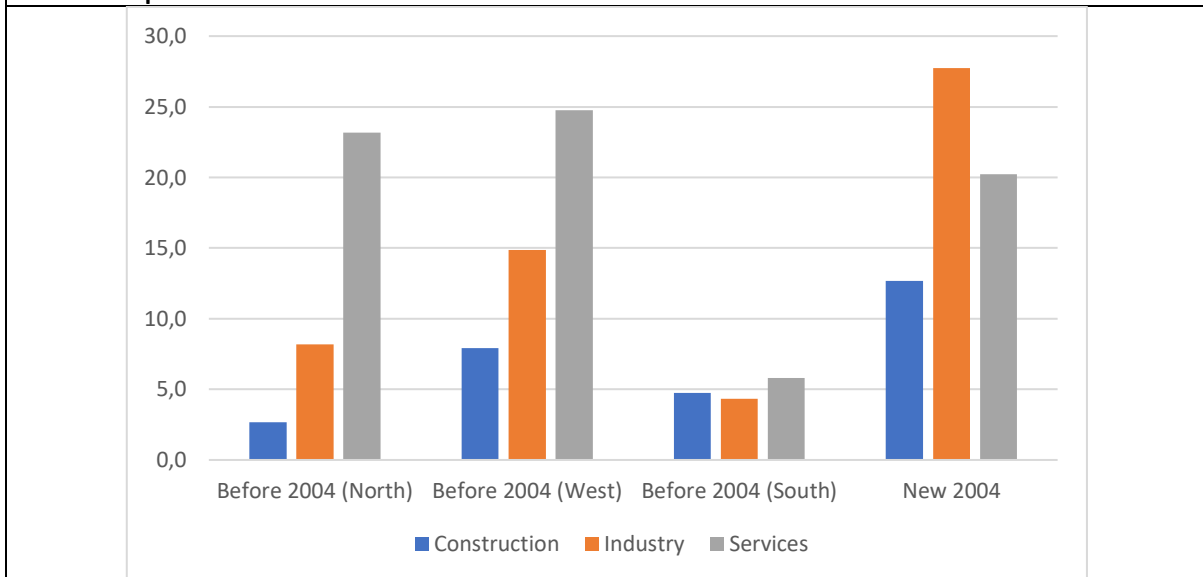
Candidate 1: refugees' labour market background

Refugees will likely have a positive impact if they manage to find a job in their host state.²¹⁷ The extent to which refugees are able to find a job depends among others on the extent to which the occupational and language skills of the refugee meet the needs in the national labour market.

I will identify whether member states value refugees' labour market background differently by looking at whether member states seek for labourers in different sectors. The main assumption behind this approach is that people need different occupational skills in order to be able to work in the different sectors. Employers in the different member states express in the EU Business and Consumer Survey which factors will likely limit their business in the next period. Figure 18 shows the percentage of employers in the construction, industry and services sector that in 2020 indicated that labour would be a limiting factor for their business. I categorise the EU member states into four member state groups: member states that were EU members before 2004, which have been further categorised into Northern Europe ("Before 2004 (North)"), Western Europe ("Before 2004 (West)") and Southern Europe ("Before 2004 (South)") and member states that became an EU member after 2004 ("New 2004"). The figure indicates that in the old member states in Northern and Western Europe people are needed in the services sector and in the old member states in Western Europe to a less extent also in the industry sector. In the old member states in Southern Europe there seems to be no indication for labour shortages in any sector. In the new member states people are needed in all sectors with a particular labour market need in the industry sector.

²¹⁷ See chapter 5 of this dissertation for more detail.

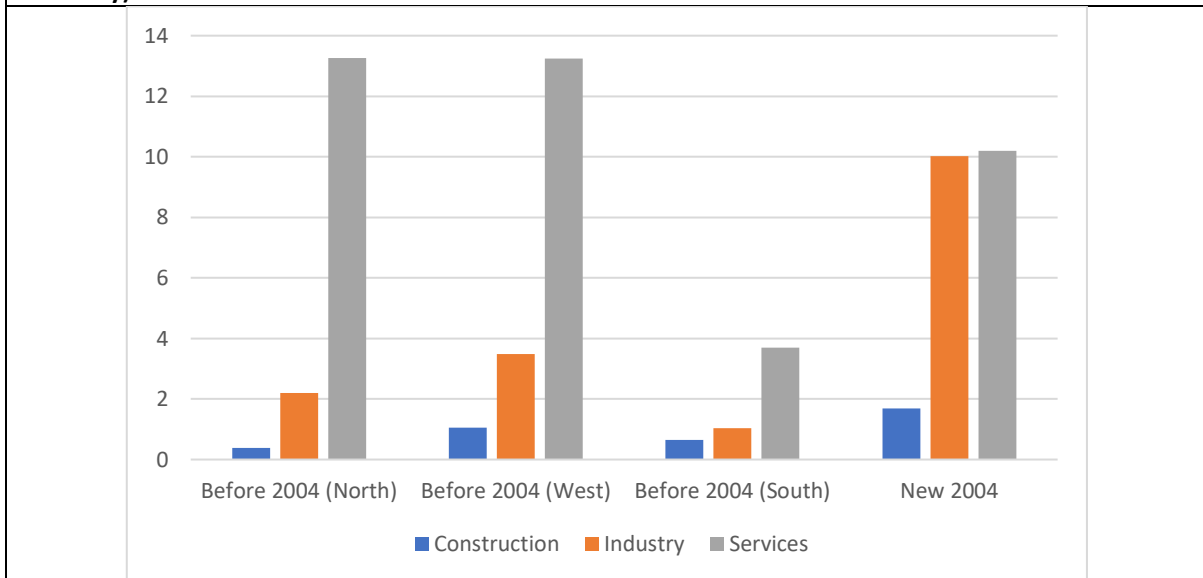
Figure 18: % of employers by sector that state that labour will likely be a limiting factor for their production in the next period



Source: Own Calculations based on the EU Business and Consumer Survey (Construction, Industry and Services). In the EU Business and Consumer Survey employers express the factors which will likely limit their business in the next period (answer possibilities: None, Demand, Labour, Equipment, Financial, Other). In the figure, I use the percentage of employers in the construction, industry and services sector by member state who stated in 2020 that they expected that labour would be a factor limiting their business as an indication for future labour shortages in the respective member state. The figure shows the average scores for the EU member states that were already member states before 2004 located in Northern Europe (Denmark, Finland and Sweden), Western Europe (Austria, Belgium, Germany, France, Ireland, Luxembourg, the Netherlands and Austria), Southern Europe (Greece, Italy, Portugal and Spain) and the member states that became member after 2004 (Bulgaria, Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and Romania).

In order to understand in which sector a member state has most labour shortages it is important to take into account the extent to which there are labour shortages in a sector (see figure 18) and the size of the sector in the economy. I combine these two components in figure 19.

Figure 19: comparative labour market needs (% of employers by sector that expect that labour will likely be a limiting factor for their production in the next period weighted by the importance of the sector in the economy)



Source: own calculation. I calculated the size of the different sectors in a member state by using Eurostat data. The data reports for every member state the number of people that works in a sector based on the NACE classification system.²¹⁸ The user's guide of the EU business and consumer survey (February 2020) reports that the construction sector corresponds with the NACE classification F, the industry sector with the NACE classification C and the services sector with the NACE classifications H, I, J, K, L, N, R and S (unfortunately Eurostat did not report the information for the NACE classifications K, R and S). I calculated the labour market needs of a member state by multiplying the share of people that work in the a sector in a member state (as a proxy of the importance of the sector in the economy) with the proportion of employers in the respective sector in this member state that reports labour market shortages (from figure 18).

Figure 19 suggests that member states value refugees' labour market background differently for two reasons. Firstly, the old Southern member states do not report significant labour market shortages in any of the sectors while the other member state groups report substantial labour market shortages in at least one sector. It means that the old Southern member states will not report many points to any characteristic that signals a refugee's experience in any of the sectors. In contrast, the other member states will likely allocate points to some of the characteristics. Secondly, the old Northern, old Western and the new member states all need many new workers in the services sector but only the new member state need a significant number of workers in the industry sector.²¹⁹ It means that the new member states will probably allocate points to characteristics that signal a refugee's experience in the industry sector while the other member states will not.

²¹⁸ Based on data provided by Eurostat: persons employed by NACE Rev. 2 (data code: TIN00151) (accessed on 28/07/2021).

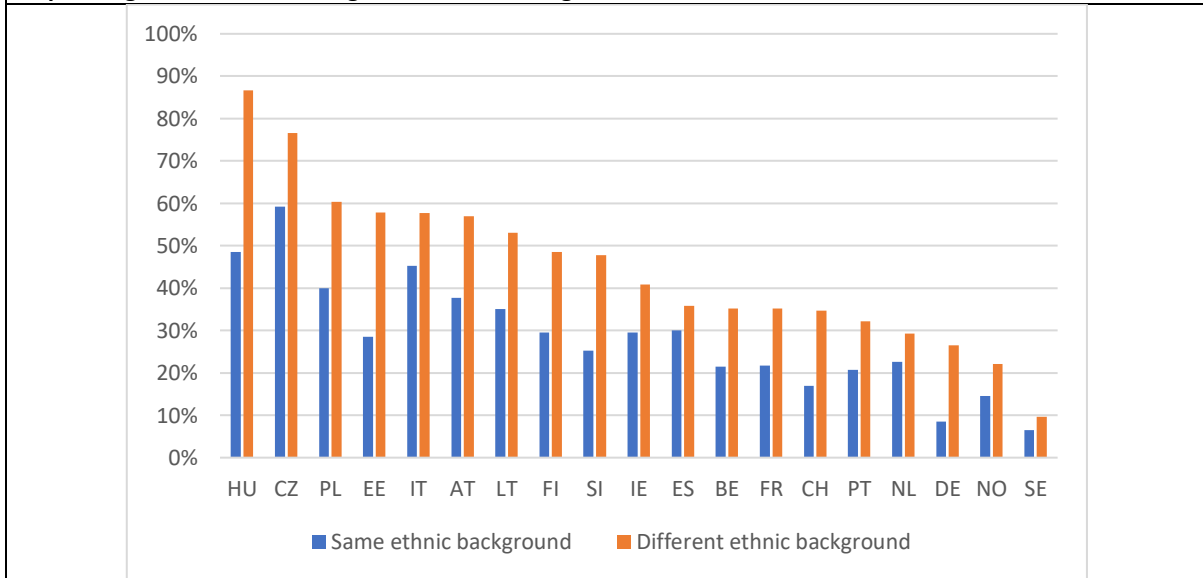
²¹⁹ Note that the industry sector reports labour shortages in the old Western member states but that the number of labourers needed is nevertheless modest in the industry sector in these member states. The reason is that the size of this sector is limited in these member states.

Candidate 2: a refugee's ethnic background

Immigration can change the ethnic composition of a state, which might be viewed by the population as a cultural threat or a cultural enrichment. Ethnicity refers to the “the fact or state of belonging to a social group that has a common national or cultural tradition”²²⁰

Figure 20 shows, based on the most recent round of the European Social Survey (from now on ESS), that people in all member states are more likely to oppose further migration by immigrants from a different ethnic background than further immigration by immigrants from the same ethnic background as the majority of the member state. The figure indicates thus that people feel more positive about immigrants that come from groups that are culturally closer to the culture of the domestic society. Based on the ESS it is unfortunately not possible to focus more closely on specific groups of immigrants with a different ethnic background. Ford (2011) finds however that in the UK people are more positive about immigrants from countries with stronger historical and cultural ties with the UK than about immigrants from countries with weaker historical and cultural ties. He labels this phenomenon as an ethnic hierarchy.

Figure 20: % of people by member state who do not support further immigration by immigrants depending on the ethnic background of the immigrant in 2018



Source: European Social Survey (round 8). I exploit the questions “To what extent do you think [country] should allow people of the same race or ethnic group as most [country]’s people to come and live here?” (answer possibilities: many/some/a few/none) and “ How about people of a different race or ethnic group from most [country] people?” (answer possibilities: many/some/a few/none). The figure shows the proportion of people in a member state that answered the questions either with “a few” or “none”. I used the design weights provided by ESS to control for differences between the sample and the population of a member state.

²²⁰ <https://www.lexico.com/definition/ethnicity> (accessed on 14/07/2021).

Member states are likely to value refugees from a certain ethnic background differently for two reasons. Firstly, as figure 20 indicates there is a substantial degree of variation on the extent to which the populations of the different EU member states consider further immigration by people from a different ethnic background as a threat. Secondly, member states have different cultural and historical ties with different states of origin. It means that member states might have different ethnic hierarchies (Spain might for example favour South-American refugees over Ukrainian refugees while for a country like Poland the opposite might apply).

3.1.2. Converting the labour market and ethnic background into characteristics

The points-based system should be based on characteristics that facilitate heterogeneous priority rankings. Member states appear to value refugees differently based on their labour market and ethnic background. The challenge is however to translate this into measurable characteristics that can be used in the points-based system.

Occupational skills

A member state values a refugee's labour market skills if the refugee possesses the required skills to perform jobs in which the member state has job opportunities. An important component of these required skills are a refugee's occupational skills. Refugees' occupational skills can be categorised as follows in the points-based system. The system can use a list of (different groups of) occupations and member states. A member state can signal that it values a refugee with certain occupational skills by allocating more points to this occupation. This list can be based on the European Classification of Skill/Competences, Qualifications and Occupations (ESCO). This classification is based on different levels. The first level is the most general level and has ten categories (1) Armed Forces Occupations, 2) Managers, 3) Professionals, 4) Technicians and Associate Professionals, 5) Clerical Support Workers, 6) Service and Sales Workers, 7) Skilled Agricultural, Forestry and Fishery Workers, 8) Craft and Related Trades Workers, 9) Plant and Machine Operators and Assemblers, 10) Elementary Occupations). Every category on the first level is further specified in more specific categories on the second level, every category on the second level is further specified in more specific categories on the third level, etc. In this way, the ESCO system classifies 2942 occupations. The points-based system could for example use the first level²²¹ of the ESCO system in order to enable member states to express how much they value a refugee with a certain occupational background.

²²¹ The points-based system could of course also use a higher level of the ESCO system. In that case, it would allow member states to express on a more detailed level how much it values a refugee with a certain occupational background.

The points-based system can only use occupational skills as characteristics as long as the centralised EU agency is able to take stock of a refugee's occupational skills. Taking stock of a refugee's occupational skills is currently not a task that takes place at the EU level. In the aftermath of the 2015 EU Asylum Crisis an increasing number of member states developed policies to measure refugees' occupational skill levels because taking stock of refugees' skills is seen as a crucial component for an effective refugee integration policy (OECD, 2016, p.30-34). In most programs that try to evaluate the occupational skills of refugees, the refugee first assesses his own occupational skills after which a national agency evaluates to which extent this self-assessment is correct (see ILO (2020, p. 46-62)) for an overview of the usual process). This evaluation is usually done on the occupational level by using a mixture of tools, including computer based assessment tests, interviews and workspace evaluation. A problem for occupational skill measurement on the EU level is that different EU member states are likely to have different requirements for the same occupation. This is illustrated by the fact that labour market access for certain occupations is regulated in different ways in different member states. Von Rueden and Bambolaite (2020, p.22) show for instance that the regulatory stringency with respect to access to personal occupations varies between member states and the same applies with respect to access to professional occupations. France has for example more strict requirements for a nurse than Sweden and Germany (Von Rueden and Bambolaite, 2020, p.20). Since different member states have different requirements for the same occupation it is only possible for the centralised EU agency to carry out a coarse evaluation that provides information on whether someone possesses the general skills to work in a certain occupation. If this happens accurately, it increases the likelihood that refugees with certain occupational skills are matched with a member state in which they can put these skills to use. A member state can afterwards execute a complementary evaluation whether the refugees that are allocated to this member state have the skills to immediately work or whether they first need additional trainings to work in their occupation.

Language skills

A second important component of a refugee's labour market background is his ability to speak the local language. Since there is a wide range of different languages used between member states²²², it is likely that member states value refugees' language proficiency differently. Language skills can furthermore also be an indicator of ethnicity (Farkas, 2017, p.16). The points-based system can recognise a refugee's language skills by using a list of all required languages (this will at least imply all official languages of the EU) with the required language level. The required language level can be based on the Common European Framework of Reference for Languages. This framework

²²² At the moment there are 27 different member states and 24 different official languages in the EU. See https://europa.eu/european-union/about-eu/eu-languages_en (accessed on 14/07/2021).

distinguishes between different levels of language capacity based on six levels (from low to high: A1, A2, B1, B2, C1, C2). There are several tests available that provide a reliable indication of a person's language level (e.g. IELTS for English, DaF for German, DELE for Spanish etc.).

Region of origin

The region of origin of a refugee is another important indicator for a refugee's ethnic background (Farkas, 2017, p.16). The detection of the country of origin of an asylum seeker is usually already part of the asylum procedure, which means that gathering information on this indicator will not result in additional work for the centralised EU agency.

An example of the list of the points-based system

In figure 21 I constructed an example of the points-based system based on the factors that I have described in this subsection. Member states ought to give points to the different categories. The more a member state values a refugee's possession of a certain characteristic, the more points it will allocate to this characteristic. Every member state can allocate a maximum of 100 points.

Figure 21: an example of a points-based system	
Characteristics	Nr. of points (max 100)
Labour market background (1st level)	
- Armed Forces Occupation	
- Managers	
- Professionals	
- Technicians and Associate Professionals	
- Clerical Support Workers	
- Service and Sales Workers	
- Skilled Agricultural Forestry and Fishery Workers	
- Craft and Related Trades Workers	
- Plant and Machine Operators and Assemblers	
- Elementary Occupations	
Language skills	
- Knowledge of English (level of B2 or higher)	
- Knowledge of French (level of B2 or higher)	
- Knowledge of Spanish (level of B2 or higher)	
- Etc.	
Region of origin	
- Africa	
- Asia	
- Rest of Europe	
- Middle-East	
- North-America	
- Oceania	
- Latin-America	
Source: own figure	

The costs for the centralised EU agency to gather the required information

The centralised EU agency would need resources to gather the required information on a refugee's occupational skills, language skills level and region of origin. A legitimate question is whether the centralised EU agency or the refugees themselves should finance the procedures to establish the refugees' occupational and language skills. A problem for letting refugees themselves finance the procedures is that refugees might be budget constrained. If for this reason procedures would not take place, then this can potentially obstruct desirable matches between refugees and member states. Most of the procedures that are necessary to identify a refugee's occupational skills and region of origin moreover would also have taken place if the centralised EU agency would not have needed to gather this information. As said, member states already increasingly engage in policies to take stock of a refugee's occupational skills. The measurement of a refugee's language skills is slightly different. If the centralised EU agency would not measure this, then the member state would, after a refugee family has been allocated to this member state probably only perform a language test to establish the extent to which the refugee speaks the local language (and maybe English). In contrast, if this occurs on the EU level for the points-based system then refugees might claim that they speak various languages and the centralised EU agency would need to use several language tests to verify the extent to which the refugees' claims are true. In order to limit this, the centralised EU agency might establish that every refugee can only request a limited number of language tests.

3.1.3. The (low) risk that the refugees to be allocated have homogeneous characteristics

Obviously refugees' occupational skills, language skills and region of origin should only be used as characteristics in the points-based system if it is likely that the refugees that need to be allocated to the member states will be heterogeneous with respect to these characteristics in most of the periods. Note that the criterion is that there needs to be heterogeneity within periods and not only across periods. If in period 1 for instance exclusively Syrians receive asylum status and need to be allocated to the member states while in period 2 only Venezuelans, it is not the case that across periods refugees have a similar ethnic background. Nevertheless, it is not a good idea to include ethnic background as a characteristic because in the individual periods there is no heterogeneity with respect to the refugees to be allocated. The question of including refugees' occupational skills, language skills and region of origin as characteristics in the points-based system depends thus on whether it is likely that refugees will be heterogeneous with respect to these characteristics within periods.

Mainly with respect to refugees' region of origin and to a lesser extent language proficiency there might be concerns if in certain periods many refugees from the same country of origin arrive together as a consequence of that they travel in groups (for instance because they are fleeing a civil war). In such a situation it might be the case that most of the refugees that need to be allocated to the member

states in a period are similar with respect to these characteristics. In this context, it is however informative to look at the data during the 2015/2016 EU Asylum Crisis. During this crisis, also frequently labelled as the Syrian refugee crisis, there were approximately 2.600.000 asylum applications in the EU of which approximately 700.000 were launched by Syrians.²²³ The asylum applicants were thus much more heterogeneous and not only from Syria.

3.2. How EU asylum law can incentivise refugees to honestly report their characteristics

In a series of papers Cox and Posner use economic theory in order to analyse how states design their immigration systems in order to reach immigration goals (Posner, 2013, p.289). Cox and Posner (2007) distinguish between the first and second order structure of immigration law. The first-order structure of immigration law deals with the number and type of immigrants that a host state wishes to host while the second-order structure deals with the design of legal rules and institutions on how these first-order policy goals can be achieved (p.809). Posner (2013, p.295) expresses the goal of the (second-order) structure of immigration law as a combination of a screening device that is able to separate desirable and undesirable migrants and as a method for controlling the behaviour of migrants by rewarding migrants for good behaviour or punishing them for bad behaviour. In this context, it should be seen as a device for the host state to obtain information both on the characteristics of the migrants (addresses the problem of adverse selection) and on the behaviour of the migrants (addresses the problem of moral hazard).

Cox and Posner (2007) study the structure of the second-order structure by distinguishing between ex ante and ex post enforcement mechanisms. The ex-ante approach basically involves state officials assessing the characteristics that they can observe before the entry of the migrant. Based on this they decide whether a migrant is of the type that the host state would like to host. In contrast, the ex post approach requires the state to continue to monitor a migrant after he has been allowed to access the host state. If the behaviour of the migrant does not match what the state expects, it can try to deport the migrant from its territory. In the article Cox and Posner argue that if a state faces adverse selection²²⁴ or moral hazard issues with respect to the migrants²²⁵, a stronger focus on ex post

²²³ Based on data provided by Eurostat: first instance decisions on asylum applications by type of decision - annual aggregated data (data code: TPS00192) (accessed on 14/07/2021).

²²⁴ i.e. it is difficult for the host state to assess whether a migrant has desirable or undesirable characteristics based on pre-entry information.

²²⁵ i.e. it is difficult for the state to motivate migrants with desirable characteristics to behave in a way that the member state envisioned when it allowed them to enter. Some migrants might for example have the ability to easily learn the local language and promise to do this but after they entered they decide to shirk and not to use their talents to learn the local language.

enforcement mechanisms offer a solution. Their rationale is that the host state by observing the behaviour of the migrant on its territory can learn new information on the characteristics of the migrant and furthermore it provides a punishment tool if good types do not perform well.

In the context of the points-based system, the centralised EU agency would potentially face a similar screening problem as states referred to by Cox and Posner. Refugees might possess private information on their characteristics and they might be hesitant to reveal this information to the centralised EU agency out of fear that they might not be matched to the member state they like. I argue that if member states adopt some mechanisms of the *ex post* approach this might create incentives for refugees to honestly reveal private information on their characteristics to the centralised EU agency. This is desirable because if it is easier for the centralised EU agency to detect this information, then the use of the points-based system will yield better priority rankings with the consequence that the matching system is able to create better matches between member states and refugee families. Since the *ex post* approach hinges on deporting migrants as soon as the state has gathered sufficient information on the migrant to conclude that the migrant does not have the desired characteristics, it is important to notice that this approach cannot be completely exported to the asylum field. The reason is that member states have to respect the non-refoulement principle which means that it is prohibited for member states to deport refugees to their state of origin as long as they face a risk of persecution there. In this context, the asylum system can at best work with the granting of temporary asylum status instead of permanent asylum status. In the case of the former the refugee family is hosted for the duration that the family faces the risk to be persecuted in the state of origin and is deported afterwards while in the case of the latter the refugee family can remain in the host state permanently.

A system that offers temporary asylum status to all refugee families after they have been matched with a member state and provides member states with the possibility to upgrade this to permanent asylum status at a later date²²⁶ can be used to (partly) deal with the adverse selection problem

²²⁶ It is easy to see the symmetry with a commonly used immigration law system in which a state divides migrants into different classes and every class offers a distinct set of rights to migrants (see Cox and Posner, 2009, p.1428-1429). In these situations migrants can upon the discretion of the state be promoted to a class in which they have more rights after a certain period of time, which the state will do if the migrants proves their value to the domestic society. Cox and Posner use the example of the United States in which most migrants enter on temporary employment visas which provide them the right to work for one employer. After the expiration of this first visa, this visa can usually be renewed once. After the expiration of this second visa a migrant might be able to become a lawful permanent resident (LPR), which gives him the right to work for any employer and stay in the US for an unlimited period of time. After 5 years as a LPR, the migrant has the right to take the final step and to naturalise in order to become American. The American immigration system shows thus clear characteristics of rewards to the migrants that have proven useful to American society and deporting the ones that have shown the opposite.

between the refugees and the centralised EU agency. The reason is that such a system increases incentives for refugees to honestly reveal private information on their characteristics. The main rationale why this is the case is that a member state will only offer permanent asylum status to refugee families after they have proven to be an enrichment for the host state. The upgrade to permanent status might for instance be based on whether a person participates for x years in the labour market of the host state and does not have a criminal record. Since the matching system takes into account the priorities of member states on the type of refugees they would like to host, being honest about their own characteristics will more likely result in that refugees and their families are matched with a host state in which their characteristics are valued (i.e. it is more likely that they will find employment and less likely that they are involved in criminal activities). This means that it will become more likely that refugees and their families will receive permanent asylum status in a member state if they are honest about the characteristics that they possess (although this permanent asylum status might not be in their favourite member state).

It is important to remark two things with respect to this proposal. Firstly, only adopting an asylum system based on temporary status with a potential reward of permanent status for refugees that appear to be promising to offer a contribution to the host state is not necessarily sufficient to make all refugees automatically reveal all of their characteristics to the centralised EU agency. Some refugees might for example have such a strong preference to be hosted in a certain member state that they still might be inclined to misrepresent some of their characteristics in order to increase the likelihood to being matched with this member state and by doing so they are willing to accept a higher risk that they might not receive permanent asylum status there. Secondly, (initially) granting temporary status reduces the incentive for refugees to invest in country-specific skills because even if they successfully acquire these skills it is not certain that they will be rewarded with permanent asylum status. This effect is stronger the more risk averse refugees are. Research indicates however that risk loving people are more likely to migrate than risk averse people (see for instance Jaeger et al. (2010) and Dustmann et al. (2020)). A recent experiment by Bocquého et al. (2018) shows moreover that refugees in Luxembourg exhibit even lower levels of risk aversion than normal migrants.

After having looked at how the EU can effectively implement a tradable quota system that allocates recognised refugees to member states, I will in the next two sections focus on the extent to which such a system contributes to avoiding future EU asylum crises and what remain shortcomings.

4. The (tradable) quota system and the risk of future humanitarian crises

The cause of the humanitarian crisis in the Mediterranean Sea during the 2015/2016 EU Asylum Crisis was the lack of asylum seekers' safe access to the EU.²²⁷ Experience with the Dublin system has shown two things. On the one hand, if the system does not function well (i.e. a large number of asylum seekers do not adhere to the EU mobility rules), then there is the risk that a Schengen Crisis will develop. The European Commission responded on the Schengen Crisis by adopting policies that aim at stopping the further inflow of asylum seekers into the EU. The EU-Turkey deal is a key example of this. On the other hand, if the Dublin system functions well and asylum seekers adhere to the EU mobility rules then there is a risk that member states at the EU's external border will unilaterally adopt non-entrée policies. The Italy – Libya deal and the Italian policies that sabotage effective SAR operations in the Central Mediterranean are examples of this.

A new EU asylum allocation system should at least reduce the likelihood that member states adopt non-entrée policies in the situation that asylum seekers adhere to the EU mobility rules and there is no (looming) Schengen crisis. This requires that the EU asylum allocation system should reduce the risk that individual member states face excessive asylum duties as much as possible. This requires that all member states take a share of the EU's asylum duties. A quota system does this as long as it uses a distribution key that aims at burden sharing. Note furthermore that allowing member states to trade their quotas with each other reduces the likelihood that individual member states face excessive asylum duties further because it allows member states to contribute to fulfil their EU asylum duties in the best way they can (i.e. financing or hosting). A tradable quota system reduces therefore the risk that individual member states face excessive asylum duties further than a quota system (given that both of them use the same distribution key).²²⁸

5. The (tradable) quota system and the risk of future Schengen crises

The adoption of a (tradable) quota system reduces, in the absence of Schengen Crises, the risk that new humanitarian crises will develop. For the question of the extent to which the adoption of such a system will contribute to preventing future EU asylum crises, it is thus necessary to evaluate the risk that new Schengen crises might develop after the introduction of this system. The cause of the

²²⁷ A lack of asylum seekers' safe access to the EU is twofold. Firstly, some asylum seekers might, due to the fact that they have to engage in a dangerous journey to reach the EU, be deterred from risking this journey and remain in a vulnerable position in a place that does not meet minimum human rights standards. Secondly, the asylum seekers that nevertheless continue to risk the journey might face life-threatening situations that they might not survive. Both situations are from a humanitarian perspective not desirable. For more detail see chapter 2, section 4.

²²⁸ For this reason a tradable quota system qualifies as a smart burden sharing tool. See subsection 2.5. of this chapter for an explanation.

Schengen crisis during the 2015/2016 EU Asylum Crisis was that asylum seekers did not adhere to the EU mobility rules by engaging in secondary movements. For the question of the extent to which, after the adoption of a (tradable) quota system, there is a risk that a similar Schengen crisis might occur in the future, it is important to analyse how incentives change for both member states and asylum seekers as compared to the situation under the Dublin system.

5.1. Framework: asylum seekers and irregular migration throughout the EU

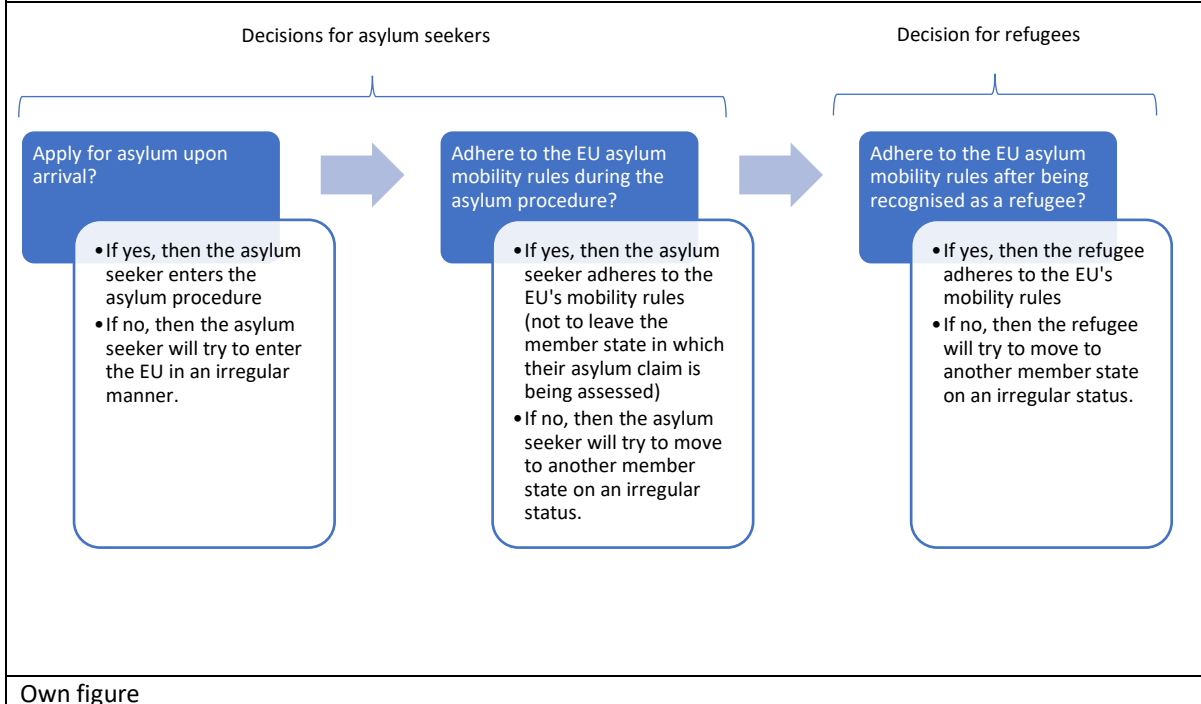
5.1.1. Three sequential irregular migration decisions

If asylum seekers behave perfectly according to what EU law prescribes them to do, then irregular migration should not occur. Asylum seekers apply for asylum upon arrival and behave according to the EU mobility rules both during the asylum procedure and after they have been recognised as refugees.

I define three important moments in which an asylum seeker might consider not to follow what EU law prescribes him to do. This helps me to analyse the likelihood that asylum seekers will decide not to adhere to EU mobility rules in an EU asylum system based on a (tradable) quota system. Importantly, the choices are sequential. The first irregular migration decision for an asylum seeker is to apply for asylum upon arrival or not. In the case that he decides not to do this, he can only enter the EU in an irregular manner. The second irregular migration decision is only for asylum seekers that applied for asylum upon arrival (and are therefore in the EU asylum procedure). They need to decide whether to remain in or abscond from the EU asylum procedure. By absconding they move into irregularity. If they decide to remain in the EU asylum procedure and are recognised as refugees, they are allocated to a member state based on the (tradable) quota system.²²⁹ In contrast, if they are rejected, they will be returned to their state of origin. Finally, there is the third decision. Only asylum seekers whose asylum claim has been accepted need to take this decision (i.e. they have become recognised refugees). They choose between being hosted by a member state in a regular manner or to abscond and move into irregularity. See figure 22 for an overview of the three irregular migration decisions under a (tradable) quota system.

²²⁹ The procedure how this works has been described in subsections 2.2. and 2.3. of this chapter.

Figure 22: three decisions for asylum seekers and refugees to adhere to EU asylum law under a (tradable) quota system



5.1.2. Asylum seekers and member states as rational decision makers

Following the rational choice approach, both asylum seekers and member states are assumed to be rational decision makers. Throughout this dissertation I have assumed that member states are motivated to adopt policies to control their level of asylum duties (i.e. they want to avoid becoming responsible for an excessive level of hosting duties). Member states will adopt so-called wave-through policies to do this. Asylum seekers in their turn evaluate whether adhering or not adhering to the EU mobility rules provides them with the highest level of expected utility.

Two motives for irregular migration: asylum shopping and moving into irregularity

Similar to chapter 3, I will follow the view that there are two different motives for asylum seekers not to adhere to EU mobility rules.²³⁰ Firstly, if the member state that an asylum seeker is allocated to is not deemed as attractive by the asylum seeker, he might logically be inclined not to adhere to what EU asylum law prescribes him to do. He might try to sabotage the EU asylum system in order to influence in which member state he is hosted (i.e. asylum shopping). Secondly, an asylum seeker might opt not to adhere to the EU mobility rules in order to reside in a different member state with an irregular status (i.e. a move into irregularity). This can for instance be the case if asylum shopping is not feasible.

²³⁰ See subsection 3.2 of chapter 3.

Two types of asylum seekers

Similar to chapter 3, I will distinguish between two types of asylum seekers: asylum seekers with strong claims and asylum seekers with weak claims.²³¹

5.2. The impact on irregular migration decisions by asylum seekers with strong claims

5.2.1. A quota system does not provide asylum shopping opportunities

Asylum seekers with strong claims have preferences on which member state they would like to be hosted in. Under the Dublin system an asylum seeker can influence in which member state they are hosted by not cooperating with the EU asylum system. There are two main ways. Firstly, by entering the EU in an irregular manner and launching an asylum application in their favourite member state. Secondly, if asylum seekers did not enter the EU in a regular manner but their member state of first entry fails to maintain the minimum asylum standard on its territory, they can violate the EU mobility rules by moving to their preferred member state, file an asylum claim there and argue that the asylum standard is not maintained in their member state of first arrival. In both cases the member state in which they file their asylum application after having engaged in a secondary movement will not be able to transfer them back to their member state of first arrival.

In contrast, non-cooperation with the EU asylum system does under a quota system not help an asylum seeker to influence in which member state he will be hosted. The reason is that irrespective of where an asylum seeker files an asylum application, he will always enter the same centralised EU asylum (assessment and allocation) procedure after which, if he proves to have a legitimate asylum claim, he will be allocated to one of the member states. After the asylum claim has been accepted and a refugee has been allocated to a member state, then this refugee still has the opportunity to move to another member state and claim there that the member state to which he has been allocated does not maintain the minimum asylum standard on its territory. If this claim turns out to be correct, then (in the spirit of the cases *M.S.S. vs. Belgium and Greece* and *Tarakhel vs. Switzerland* and *Italy*) the other member state cannot transfer the refugee back to the member state to which he has been allocated. The EU asylum system can however prevent asylum seekers, who are allocated to a member state that does not maintain the minimum asylum standard on its territory, from engaging in asylum shopping by spreading the asylum seekers that are already allocated to this member state (and do not want to stay in this member state) over the remaining member states that still maintain the minimum asylum standard on their territory.²³²

²³¹ See subsection 3.2. of chapter 3.

²³² Note that this might also be a solution under the Dublin system. Asylum shopping will nevertheless still be possible if the asylum seeker is not registered upon arrival.

In sum, under a quota system it is possible to organise an EU asylum system that completely avoids asylum shopping. It means that an asylum seeker cannot change the member state in which he will be hosted by any form of non-cooperation with the EU asylum system. Thus, asylum shopping can in such a setting not be a reason for an asylum seeker or refugee not to adhere to the EU mobility rules.

5.2.2. Irregular migration motivations for asylum seekers with strong claims

Irregular migration by asylum seekers (with strong claims): no substantial risk

If a quota system is well-designed, then asylum seekers cannot influence their allocation by non-cooperating with the EU asylum system. It is therefore unlikely that asylum seekers will decide not to adhere to EU mobility rules in the first two decisions. The reason is that by not adhering to the EU mobility rules they would give up the opportunity to receive legal asylum status and, once their asylum status has been confirmed, there is always a probability that they will be allocated to a member state that is high on their preference ranking.

Irregular migration by refugees: the risk of unhappiness with their asylum allocation

Despite the fact that it is unlikely that asylum seekers with strong claims will decide not to adhere to the EU mobility rules in the first two decisions, there is still a risk that they will do this in the third decision. In the situation that asylum seekers have been granted refugee status and allocated to a member state, these refugees have certain rights that they can only invoke in the member state to which they have been allocated (e.g. access to the labour market, health care system and welfare state). Since refugees cannot invoke these entitlements in other member states, they practically give up these entitlements once they move to another member state. There are however situations in which they might consider this. The probability increases if some of them are allocated to a member state that is low on their preference ranking. This can for instance be the case if many refugees have homogenous preferences on where they would like to be hosted (Jones and Teytelboym, 2017a, p.163; 2017b, p.99). If refugees do not value the entitlements, which follow from their refugee status, in the member state to which they have been allocated, then there might be some of them willing to give these entitlements up by moving to another member state and residing there with an irregular status.²³³

5.2.3. Member states' motivations to engage in wave-through policies

Under a quota system member states can still use wave-through policies to avoid hosting duties. As I explained refugees might be interested to move into irregularity if they are allocated to a member state in which the entitlements that follow from their refugee status have little value and in another

²³³ See also the example that I used in subsection 3.2. of chapter 3.

member state they have a rich social network and good black labour market opportunities. There are two types of wave-through policies that member states can use. Firstly, a member state can strategically use its priority ranking to select refugees from which it believes that there is a high probability that they will move into irregularity once they are allocated to this member state. Secondly, a member state can simply offer asylum conditions of the lowest quality feasible. If the EU takes appropriate action and effectively forces all member states to maintain the minimum asylum standard on their territory, member states that want to reduce their hosting duties can still engage in wave-through policies. They will simply maintain the minimum asylum standard on their territory and hope that refugees that are allocated to them will opt to move to other member states in order to reside there with an irregular status.

The limited risk of wave-through policies under a quota system

The fact that a quota system spreads hosting duties, reduces the risk that member states will adopt wave-through policies that cause large-scale irregular migration movements within the EU. This is for two reasons. Firstly, a burden sharing system reduces the likelihood that member states develop excessive hosting duties and diminish therefore member states' willingness to adopt wave-through policies. Secondly, even if some member states do develop excessive hosting duties, then the wave-through policies of these member states will not automatically lead to irregular migration movements throughout the EU on a large scale. The reason is that only a limited number of refugees are hosted in these member states (since the other refugees are hosted in the other member states that do not have excessive hosting duties yet). The wave-through policies of the member states that developed excessive hosting duties target therefore only a limited number of refugees.

The significant risk of wave-through policies under a tradable quota system

A tradable-quota system will like a general quota system initially spread hosting duties over the different member states. By allowing member states to trade their asylum quotas, the system provides member states with the opportunity to use an opportunistic strategy to make money by bidding for additional hosting responsibilities on top of their initial allocation of hosting duties and encouraging refugees that are allocated to them to move onward to other member states. In this way, these member states receive compensation from other member states by taking charge of additional hosting duties but, in the end, evade these duties by using wave-through policies. Of course, this opportunistic strategy is easiest to execute for member states that are unpopular destinations for refugees (i.e. the member states that are low on the preference rankings of refugees). The more additional hosting duties an opportunistic member state manages to acquire, the more refugees are encouraged to ignore their match. The risk is therefore highest in a period that combines two factors:

a lot of refugees need to be matched with member states and member states that follow this opportunistic strategy manage to acquire a lot of hosting duties for these refugees.

I will use the following example to provide some clarification. Imagine a new large influx of Syrian refugees, and that a member state like Hungary knows that most Syrian refugees would not like to be hosted in Hungary. The fact that most Syrians put Hungary low on their preference rankings provides an indication to Hungary that most Syrians do not expect to appreciate life in Hungary much. For this reason, Hungary might gamble on the idea that most Syrian refugees potentially prefer to reside in another member state with an irregular status instead of being hosted in a regular manner in Hungary. Hungary's gamble would be that it bids for a lot of additional hosting duties (for which it receives compensation from the other member states in return) and uses wave-through policies to increase the likelihood that the Syrian refugees that are allocated to Hungary move to other member states. If Hungary manages to acquire a lot of hosting duties in this period, then the new hosting duties will be concentrated in Hungary. If Hungary then uses wave-through policies, it targets a large number of refugees to move from Hungary to other member states. The situation sketched in this example combines thus the two factors that predict when there is a substantial risk of large scale irregular migration movements throughout the EU under a tradable quota system.

5.3. The impact on irregular migration decisions by asylum seekers with weak claims

5.3.1. Irregular migration motivations for asylum seekers with weak claims

Asylum seekers with weak claims only use the asylum system to legitimise their presence on EU territory by claiming that they deserve asylum although in fact they do not. It means that they will need to move into irregularity before the centralised EU agency is able to confirm that they do not deserve asylum status. They will try to do this by either entering the EU in an irregular manner or by absconding from the EU asylum procedure. If they do not manage to do this, it is simply a matter of time before they will be returned to their state of origin.

How to prevent asylum seekers with weak claims from moving into irregularity?

1. *The importance of effective external border management.*

Effective external border management ensures that asylum seekers with weak claims need to apply for asylum in order to be able to enter the EU. Currently, member states are responsible for ensuring effective border management for their part of the EU's external border.

2. *The EU needs to limit the risk that asylum seekers abscond from the asylum procedure.*

Asylum seekers with weak claims should not have the ability to abscond from the EU's asylum procedure. The fact that the asylum procedure is organised at the EU level implies that the

centralised EU agency is in the best position to take adequate action to avoid asylum seekers absconding from the asylum procedure.

5.3.2. A (tradable) quota system does not guarantee effective external border management

The problem of the lack of burden-sharing in EU external border management

The introduction of a (tradable) quota system improves compliance incentives for member states at the EU's external border as compared to the situation under the Dublin system. The reason is that, the new system provides burden sharing with respect to both hosting and return duties, it will become less probable that these member states will be overwhelmed with asylum duties if they comply with their responsibilities under EU law. This does not guarantee however that member states at the EU's external border will voluntarily run an expensive external border management system. The reason is the lack of burden-sharing in the EU's external border management. Member states are together with EU agency Frontex responsible for the effective management of their part of the EU's external border. The member states retain the primary responsibility however while Frontex plays a more supportive role.²³⁴ Although the member states at the EU's external border do not need to pursue the duty to manage their part of the EU's external border alone, still there rests a disproportionate task upon the shoulders of the member states that either possess a long part of the EU's external border or are located at one of the main migratory routes into Europe (Rijpma, 2017, p.218-219; Rijpma and Fink, 2020, p.12).

The higher the costs of running an effective external border management system for which one EU member state is primarily responsible, the more resistant this member state will be to provide this external border management system. Especially if many of the asylum seekers will leave its territory and move to another member state, it might not have a strong incentive to strictly monitor its part of the EU's external border. The reason is that if most asylum seekers will leave the territory of the member state at the EU's external border, this member state will not face much of the consequences of its failure to manage its part of the EU's external border well.

5.4. A (tradable) quota system: what does it solve and what remain challenges?

So far I have explained how the introduction of a (tradable) quota system changes incentives for asylum seekers and member states as compared to the situation under the Dublin system. Here I will shortly contrast the main findings. This is useful because it makes more clear what the adoption of a (tradable) quota system would solve and what would remain challenges for the purpose of preventing future Schengen crises. Table 7 provides an overview of the extent to which such a new system poses

²³⁴ Article 7(1) REGULATION (EU) 2019/1896 (European Border and Coast Guard Regulation).

a risk of large-scale irregular migration movements by asylum seekers throughout the EU with strong or weak claims (a “+” denotes a high risk while a “-” marks a low risk). Note that these assessed risks portray the situation in the absence of complementary policies.

Table 7: alternative EU asylum allocation system and the risk of large-scale irregular migration movements			
	Dublin system	Quota system	Tradable quota system
Asylum seekers with strong claims	+ Decisions 1 and 2 (asylum shopping)	-	+ Decision 3 (move into irregularity)
Asylum seekers with weak claims	+ Decisions 1 and 2 (move into irregularity)	+ Decisions 1 and 2 (move into irregularity)	+ Decisions 1 and 2 (move into irregularity)
Explanation: a “+” denotes that in the absence of supporting policies the risk is high that asylum seekers will engage in irregular migration. a “-” indicates that in absence of supporting policies the risk is low that asylum seekers will engage in irregular migration.			
Own table			

5.4.1. The Dublin system

Asylum seekers with strong claims have under the Dublin system an incentive to enter the EU in an irregular manner and move onward to another member state in order to influence in which member state they will be hosted. Member states at the EU’s external border have incentives to facilitate that asylum seekers will not adhere to the EU mobility rules as a result of that the first entry criterion concentrates hosting duties in these member states. By failing to take into account their responsibilities under EU law to install an effective border management system for their part of the EU’s external border and / or to maintain the minimum asylum standard on their territory, they provide asylum seekers with the opportunity to engage in asylum shopping. It means that in the absence of appropriate action by the EU to counter these incentives there is under the Dublin system a substantial risk that a large number of asylum seekers with strong claims will engage in irregular migration movements in either the first or the second decision.

Asylum seekers with weak claims will irrespective of the choice of EU asylum allocation system only be interested to use the EU asylum system as an excuse to access the EU and move into irregularity as soon as they can in their favourite member state. The member state of first entry criterion also creates incentives for member states at the EU’s external border to ensure that asylum seekers with weak claims can do this. The reason is that it concentrates return duties in these member states (Den Heijer et al., 2016, p.615). Member states at the EU’s external border can facilitate this by failing to administer their part of the EU’s external border well so that asylum seekers can enter undetected or by allowing asylum seekers to abscond during the asylum procedure. There is under the Dublin system, in the absence of complementary institutions, a substantial risk that a large number of asylum seekers

with weak claims will engage in irregular migration movements in either the first or the second decision.

5.4.2. A (tradable) quota system

By comparing the performances of the Dublin system and a (tradable) quota system it is possible to make some general observations on the extent to which a new EU asylum allocation system can contribute to preventing future Schengen crises. The adoption of a both a quota and a tradable quota system has (as compared to the Dublin system) two characteristics that contribute to the prevention of future Schengen Crisis. Firstly, it provides burden-sharing with respect to both hosting and returns duties. Secondly, it prevents asylum seekers (with strong claims) from influencing in which member state they will be hosted by not adhering to the EU mobility rules (i.e. the system effectively prevents asylum shopping).

The fact that both under a quota and a tradable system it is an impossibility for asylum seekers to engage in asylum shopping means that asylum seekers with strong claims will be inclined to adhere to the EU mobility rules in at least the first two decisions. They might however consider not to adhere to the mobility rules in the third decision if they are matched with a member state that offers them poor asylum conditions. The introduction of a quota system that spreads hosting duties over the member states increases the likelihood that refugees will be hosted in member states that are willing to provide good asylum conditions. The situation is more difficult under a tradable quota system due to the fact that opportunistic member states might use the trading system as a money generating tool. The member states want to receive money by bidding for additional hosting responsibilities and afterwards evade them by encouraging refugees that are allocated to them to move onward to other member states. Since this yields a situation in which the EU's hosting duties will concentrate in these member states, there remains after the introduction of a tradable quota system in the absence of complementary policies a substantial risk of large-scale irregular migration movements throughout the EU by asylum seekers with strong claims.

The choice of EU asylum allocation system cannot perform miracles with respect to the prevention of irregular migration movements by asylum seekers with weak claims. The reason is that these asylum seekers are not motivated by the prospect of good asylum conditions but are only interested in using the EU asylum system in order to gain access to the EU and move into irregularity. The only way to ensure that these asylum seekers do not violate the EU mobility rules seems to be to make it as difficult as possible for them to enter the EU in an irregular manner and / or move into irregularity during the EU asylum procedure. The choice of EU asylum allocation system is important however for the extent to which member states will be willing to voluntarily implement institutions that ensure this. The fact

that both a quota and a tradable quota system provide burden-sharing with respect to the EU's return duties will likely improve incentives for member states to take the implementation of these institutions seriously. However, it might not be enough if the costs of implementing these policies are not shared between member states. The main example is the willingness of member states at the EU's external border to provide effective border management for their parts of the EU's external border. These member states might, despite the introduction of a quota or a tradable quota system, still be hesitant to implement this for their part of the EU's external border due to the lack of burden sharing with respect to the EU's external border management. With respect to avoiding asylum seekers absconding during the EU asylum procedure, there is burden sharing because it is now the task of a centralised EU agency. It is however important to understand that this agency needs to have the means to fulfil its duty that asylum seekers do not abscond during this procedure and that moreover its interests align well with this goal. After the introduction of a quota or a tradable quota system there thus remains in the absence of complementary policies a risk that new Schengen crises will arise as a result of a large number of asylum seekers with weak claims not adhering to the EU mobility rules in either the first or the second decision.

5.5. Complementing institutions to reduce the risk of future Schengen crises

From the previous sections it follows that the replacement of the Dublin system in favour of a (tradable) quota system yields three remaining (or newly introduced²³⁵) deficits. I will offer some suggestions that the EU can take to address these three deficits.

5.5.1. Establishing a duty for member states to make reasonable efforts to avoid refugees absconding

The EU can establish a new duty to member states that prescribes to member states that they need to perform the reasonable effort to prevent refugees that have been allocated to them from moving into irregularity. Member states will be less inclined to adopt opportunistic strategies to bid for more quota and afterwards engage in wave-through policies to encourage refugees that are allocated to them to move onward to other member states if this duty is effectively enforced. Importantly, the required effort that member states will need to exert is not likely to be homogenous. For member states that have better labour market opportunities for refugees it might for instance matter less that it offers less generous social welfare benefits than for member states with poorer labour market opportunities.

²³⁵ The problem caused by the presence of non-popular opportunistic member states that might use the trading system as a money generating tool was not there under the Dublin system.

A potential moral hazard problem

Problems might arise due to the fact a so-called moral hazard problem might arise. According to Posner (2000, p.4) it is to be expected that agency problems in the form of moral hazard arise if two conditions hold: 1) the goals of the principal and the agent do not align and 2) the principal cannot easily verify how the agent performs his task which makes the contract difficult to enforce. The latter condition means that a member state can ignore what it pledged to do to other member states and act in a way that is in its own direct self-interest. As I explained, the adoption of a tradable quota risks that an unpopular member state will bid for additional hosting duties and afterwards not make a reasonable effort to avoid the refugees that have been allocated to this member state moving into irregularity in another member state. The interests of an unpopular member state might thus be not well aligned with the duty. If it is then difficult for an enforcement agency to monitor the extent to which the unpopular member state carries out this duty, it is not unthinkable that a moral hazard problem arises. The resulting consequence is that an unpopular member state might ignore the execution of this duty.

The need for smart-monitoring by the enforcement agency

Enforcement of the duty will likely be an issue because it will not be easy for an enforcement agency to observe whether a member state does make reasonable efforts to avoid refugees that are allocated to them absconding and moving into irregularity in other member states. The enforcement agency can however think of solutions to optimise its budget for fulfilling its task. A potential smart-enforcement design might be to use an indicator that measures the happiness of refugees with the quality of asylum that they receive in the member state that they have been allocated to. If a lot of asylum seekers that are allocated to a certain member state opt to leave the member state that they are allocated to, it might indicate that this member state did not put sufficient effort into preventing asylum seekers for whom it is responsible from absconding. A potential indicator that can be used is the proportion of refugees, which are allocated to a member state in the last x years, that are found to be irregularly present in another member state. If this proportion exceeds a certain threshold, then this might be a signal for the EU to investigate what is going on in this member state and potentially take action.²³⁶ The enforcement agency can then channel its resources (exclusively) to the member states in which many allocated asylum seekers decide to move to other member states and investigate more closely why so many asylum seekers apparently have the desire to leave these member states. It is possible to use such an indicator due to the fact that it has been registered to which member state

²³⁶ It is important to notice that this indicator does not provide a definite judgement that a member state that exceeds this threshold is at fault. It only provides information to the enforcement agency that this member state has problems with convincing the refugees it is responsible for not to move into irregularity. The enforcement agency can then decide to monitor this member state more closely to see what is going on there.

a refugee has been allocated. Importantly, the indicator also relies on the extent to which the destination member state of the refugees can detect these refugees on its territory and can prove that these refugees are irregularly present there.²³⁷

5.5.2. Provide burden-sharing in the EU's external border management

The lack of burden-sharing with respect to the EU's external border continues to pose a threat for the borderless Schengen Area.²³⁸ There are different ways in which the EU might arrange effective burden-sharing of EU external border management. I will list two alternatives. One possibility is to arrange external border management on the centralised level. In such a system it would for instance be a centralised EU agency that is in charge of arranging effective external border management. Another possibility is to seek a decentralised solution. In such a system, the member states at the EU's external border are still responsible for effectively managing their part of the external border but they receive financial compensation or operational support from other member states in order to fulfil this duty. If the EU opts for the latter option it is of importance that the EU closely monitors to what extent the member states at the EU's external border take their task seriously.

5.5.3. Establishing a duty for the centralised EU agency to make reasonable efforts to avoid asylum seekers absconding during the EU asylum procedure

The centralised EU agency has an important role to avoid asylum seekers absconding during the asylum procedure and move into irregularity. EU law currently provides several options to member states to avoid asylum seekers absconding from the asylum procedure. The centralised EU agency can use the same tools to prevent this. It is furthermore important that the agency has both the means and the willingness to take its duty seriously. With respect to the latter the EU can use a similar smart monitoring system as for the enforcement of the earlier mentioned duty that member states have to exert reasonable efforts to avoid refugees that are allocated to them absconding and moving into irregularity.²³⁹

Two tools that can be used to avoid asylum seekers absconding

EU law currently provides some options to member states that aim at avoiding asylum seekers absconding during the procedure: asylum detention and the use of border procedures.

1. The use of border procedures

²³⁷ The latter might be difficult due to the fact that under EU law refugees have the right to be present on the territory of another member state for a maximum of 90 days in every 180 days.

²³⁸ See subsection 5.3. of this chapter.

²³⁹ See subsection 5.5. of this chapter.

If asylum seekers arrive at the EU's external border, then the member state has under certain conditions the possibility to assess this asylum claim without allowing the asylum applicant access to its territory (EASO, 2020, p.5.). This is a so-called border procedure. Member states have the possibility to assess an asylum claim by means of a border procedure if the asylum applicant has a low probability of being accepted as a refugee.²⁴⁰ A border procedure can for instance be used in the situation that the state of origin or a transit state of the asylum seeker can be considered as safe.²⁴¹ A border procedure has a maximum duration of 4 weeks. When the procedure exceeds these 4 weeks, then the asylum seeker has to be allowed access to the territory and be admitted to the ordinary asylum procedure.²⁴² In the New Pact on Asylum and Migration the European Commission proposes to make more extensive use of border procedures. It proposes to admit asylum seekers to border procedures when they are coming from a state that has an asylum recognition rate of below 20%.

2. Detention of asylum seekers that are on the territory of the member state

Under EU law the guiding principle is that asylum seekers have freedom of movement in the territory (or at least in part of the territory) of the member state that assesses their asylum claim.²⁴³ Member states have in exceptional circumstances the option to detain asylum seekers that threaten to abscond from the asylum procedure and move into irregularity (see Tsourdi (2016, p.4-10)).²⁴⁴ The exceptional character of this tool is emphasised due to the fact that member states have to undertake an individual assessment whether the same effect cannot be reached with a less coercive tool.²⁴⁵ Rejected asylum seekers can equally be detained when there is a risk that they will abscond.²⁴⁶

6. Conclusion

The Dublin system creates, as elaborately described throughout this dissertation, incentives for both asylum seekers and member states that do not contribute to the prevention of future EU asylum crises. On the one hand, both member states at the EU's external border (that are crucial for the functioning of the Dublin system in the sense that asylum seekers adhere to the EU mobility rules) and

²⁴⁰ Article 43(1) of Directive 2013/32/EU (Asylum Procedures Directive) establishes the grounds for a border procedure. A border procedure can be used when an asylum application is inadmissible (see article 33 of Directive 2013/32/EU (Asylum Procedures Directive) for when an asylum application is admissible) or has a low probability to be accepted (see article 31(8) of Directive 2013/32/EU (Asylum Procedures Directive) for when an asylum application has a low probability to be accepted).

²⁴¹ Article 36 to 38 of the Directive 2013/32/EU (Asylum Procedures Directive) provide definitions for when a state can be considered as a safe state of origin or transit.

²⁴² Article 43(2) of Directive 2013/32/EU (Asylum Procedures Directive).

²⁴³ Article 7(1) Directive 2013/33/EU (Asylum Reception Conditions Directive).

²⁴⁴ Article 8 Directive 2013/33/EU (Asylum Reception Conditions Directive) establishes the possibility to detain asylum seekers. Sub 3 provides the grounds when detainment can be used. The risk of absconding can be found under b. The article clearly prescribes that it only should be used in exceptional circumstances.

²⁴⁵ Article 8(2) DIRECTIVE 2013/33/EU (Asylum Procedures Directive).

²⁴⁶ Article 15(1.a) DIRECTIVE 2008/115/EC (Returns Directive).

asylum seekers have a strong interest that the Dublin system does not function well. As the experience from the 2015/2016 EU Asylum Crisis shows, this can create a Schengen Crisis if a large number of asylum seekers arrive at the EU's external border in a short time frame and ignore the EU mobility rules by engaging in secondary movements throughout the EU. On the other hand, a functioning Dublin system contributes to aggravating an already existing humanitarian crisis because it becomes more likely that member states at the EU's external border will adopt non-entrée policies in order to avoid new asylum duties. The Dublin system creates thus problems both in the situation that it functions well and in the situation that it does not function well. I have labelled this in chapter 4 as the Dublin paradox.²⁴⁷

In this chapter, I have looked into a popular suggestion in the literature to replace the Dublin system for a (tradable) asylum quota system with an attached matching mechanism. The latter allows member refugees to express their preferences for member states in which they would like to be hosted and member state to convey their priorities on which refugees they would like to host. This is a combination of the closely related proposals by Fernández-Huertas Moraga and Rapoport (2014, 2015) and Jones and Teytelboym (2017a, 2017b). More specifically I have looked into what it would entail to effectively implement such a system. Firstly, this entails an analysis of what it would entail to organise a (tradable) quota system that allocates refugees to the member states. Secondly, it involves an analysis of the extent to which, given that asylum seekers are allocated to member states, such a system truly reduces the risk of future EU asylum crisis. The main finding with respect to both parts is that the implementation of a (tradable) quota system is not easy. With respect to the first part, I have built upon on the work by Jones and Teytelboym to provide some suggestions for how the EU can implement such a (tradable) quota system that effectively assigns the refugees to be hosted to the member states.

With respect to the second part, I have explained that the introduction of both a quota and a tradable quota system offers a solution to the main problem of the Dublin system by providing burden-sharing with respect to the EU's asylum duties. Provided that asylum seekers and refugees adhere to the EU mobility rules it is less likely that individual member states will face excessive asylum duties. Member states will as a consequence be less inclined to adopt non-entrée policies and therefore the risk that new humanitarian crises will develop is reduced. It appears however not to be that easy to ensure that asylum seekers and refugees will adhere to the EU mobility rules even if the EU asylum allocation system provides burden-sharing with respect to the EU's asylum duties. There might still be factors that facilitate irregular migration by asylum seekers which would create a risk that new Schengen

²⁴⁷ See section 7 of chapter 4.

crises might develop in the future. Importantly some of the factors build upon unaddressed issues outside of the realm of the EU asylum allocation system (for instance the lack of burden-sharing with respect to the EU's external border management) while other factors might be newly introduced by the choice of the EU asylum allocation system (for example the fact that a tradable quota system provides the opportunity to member states to engage in opportunistic behaviour by bidding for additional quotas and afterwards engaging in wave-through policies). It highlights the importance of critically reviewing incentives for member states, asylum seekers (and potentially newly created EU agencies) after a new EU asylum allocation system is introduced in order to identify potential weaknesses that need to be addressed to really prevent future EU asylum crises.

Chapter 7

Conclusion

In the aftermath of the Syrian Civil war an increasing number of people tried in 2015 to reach EU territory with the goal to apply for asylum. In the first half of the year 2015 this led to an increasing number of people that came into trouble while they were trying to cross the Mediterranean Sea in order to access the EU. This can be qualified as a humanitarian crisis. In the second half of 2015, the asylum seekers caused a Schengen crisis when a large number of asylum seekers that was able to reach the EU ignored the Dublin system by engaging in secondary movements to other member states and applying for asylum there. The CEAS has frequently been blamed in the literature as a structural factor that creates incentives for both asylum seekers and member states to behave in a way that facilitates the development of EU asylum crises. Nevertheless, the most important component of the CEAS, the Dublin system, has been maintained in the aftermath of the 2015/2016 EU Asylum Crisis.

1. Research question 1

In the first part of this dissertation I aimed to offer an answer to the following question:

“What are the obstacles of the choice to maintain the Dublin system for the quest to avoid future asylum crises?”

I have offered a positive analysis on incentives that the Dublin system creates for asylum seekers and member states and how this corresponds to the goal of preventing future EU asylum crises (i.e. humanitarian and Schengen crisis). Asylum seekers take two decisions. Firstly, they will decide to stay in the region or to come to the EU. Secondly, (given that they decided to come to the EU) they will decide to adhere to the EU mobility rules by staying in the member state that they are allocated to or not (if they decide not to, they engage in a secondary movement). The first choice is important for the risk that future humanitarian crises will develop while the second choice influences the risk that future Schengen crises will develop. Asylum seekers take the decisions based on which option provides the highest expected utility level. Member states can discourage asylum seekers from coming to the EU by engaging in non-entrée policies. Similarly, they can encourage asylum seekers, who are allocated to them, not to adhere to the EU mobility rules by adopting wave-through policies. I use an assumption that member states are interested in contributing to the CEAS by hosting asylum seekers that deserve asylum status (in a way that at least corresponds with the minimum EU asylum standard) and returning asylum seekers that do not deserve it to their state of origin. They are only willing to do this up to a certain level, however. Member states adopt a combination of non-entrée and wave-through policies in order to prevent their level of asylum duties from going beyond this level.

1.1. Three factors

Based on chapters 2 to 4 I distinguish between three factors that facilitate the development of future EU asylum crises as long as the CEAS allocates asylum duties based on the Dublin system.

- 1) The Dublin system concentrates asylum duties in a limited number of member states.

The Dublin system puts all asylum duties on a limited number of member states at the EU's external border. The combination of that practically all nationals of instable countries need a visa to enter the EU and sanctions for airline carriers that allow TCNs, who do not have a right to enter the EU, to board a flight to the EU, cuts off the possibility for the majority of the asylum seekers to reach the EU by plane (Den Heijer et al., 2016, p.619). It means that these asylum seekers can only reach the EU by arriving at the EU's external border. Since the Dublin system is a first-entry based system, this creates a situation that the majority of the EU's asylum duties are borne by member states that are located at popular entry points into the EU.

- 2) The Dublin system offers asylum seekers de jure limited opportunities to decide in which member state they would like to be hosted.

Asylum seekers have preferences on where they would like to be hosted. Since asylum seekers under the Dublin system can only influence their asylum allocation by choosing their point of entry into the EU, the system largely prevents them from freely choosing in which member state they are hosted. In practice there are only a limited number of member states at the EU's external border (see point 1). Den Heijer et al. (2016, p.610) argue therefore that the Dublin system is a system based on coercion because the system offers only very limited legal opportunities to asylum seekers to influence in which member state they are hosted. Asylum seekers should simply accept that they are hosted in the member state that the Dublin criteria allocates them to.

- 3) The Dublin system offers asylum seekers (partly facilitated by the waiver policies pursued by member states at the EU's external border) de facto opportunities to influence in which member states they are hosted complying with the EU mobility rules.

Although asylum seekers from a legal perspective should not be able to influence in which member state they are hosted, they will de facto have this opportunity as long as the Dublin transfer system is disabled. The reason is that destination member states of secondary movements in such a situation cannot transfer asylum seekers back to their member state of first arrival. The implication is that asylum seekers can safely select in which member state they would like to be hosted by simply moving there and applying for asylum. Note that this transfer system depends on arriving asylum seekers being registered upon arrival, and the minimum asylum standard being maintained in the member

state of first arrival. Asylum seekers can thus influence in which member state they will be hosted by entering the EU in an irregular manner and, in this way, avoiding being registered. Member states that want to escape from asylum duties can furthermore assist in creating these de facto opportunities by failing to register arriving asylum seekers and not maintaining the minimum EU asylum standard on their territory.

1.2. The analysis

These three factors contribute to the development of EU asylum crises for the following reasons. In chapter 2, I summarised the main findings in the literature that explain the events during the 2015/2016 EU Asylum Crisis. Let us start with the development of the Schengen Crisis. The Schengen Crisis developed due to the fact that a large number of asylum seekers during the 2015/2016 EU Asylum Crisis did not adhere to the EU mobility rules by engaging in secondary movements. The Dublin system played a key role in the development of the Schengen Crisis because asylum seekers, due to the fact that they perceived other member states as more attractive than their member state of first arrival, were strongly interested not to adhere to the EU mobility rules and to engage in secondary movements to influence in which member state they would be hosted (Den Heijer et al, 2016, p.608-615).

Data indeed indicates that a large number of asylum seekers following the Syrian Civil War was successfully able to move from Greece, their member state of first arrival, to Germany or Sweden.²⁴⁸ An important explanatory factor behind this is that the Dublin transfer system was large disabled due to the fact that asylum seekers adopted strategies to avoid being registered (Maiani, 2016b, p.22; 2017, p.626; Costello and Mouzourakis, 2017, p.285). Greece and Italy, the main member states of first arrival during the 2015/2016 EU Asylum Crisis, had furthermore failed to maintain the minimum asylum standard on their territory (see the cases *M.S.S. vs Belgium and Greece* and *Tarakhel vs. Switzerland and Italy*) of which the implication is that registered asylum seekers also could not be transferred back to these member states. Asylum seekers could during the 2015/2016 EU Asylum Crisis thus more or less freely choose in which member state they would be hosted by engaging in a secondary movement and applying for asylum there.

In the aftermath of the 2015/2016 EU Asylum Crisis and the closure of internal Schengen borders, the European Commission launched a program "*Back to Schengen – A Roadmap*". The adopted program logically responds on the strategies pursued by asylum seekers and member states during the 2015/2016 EU Asylum Crisis. Since the non-operational Dublin transfer system was an important deficit of the CEAS during the 2015/2016 EU Asylum Crisis, a key goal in this program is to adopt

²⁴⁸ See in this context the combination of figure 1 and table 2 in subsection 4.2. of chapter 2.

policies that rehabilitate this transfer system. It should be noted that, due to the strong incentives for member states at the EU's external border to engage in wave-through policies, it is probably a costly and difficult task for the European Commission to ensure that member states at the EU's external border register asylum seekers on arrival and maintain the minimum asylum standard on their territory. In chapter 3, I went beyond the events during the 2015/2016 EU Asylum Crisis by leaving from the point that the European Commission in line with its goal in the Roadmap manages to make the Dublin transfer system operational again. I analysed to what extent an operational transfer system indeed ensures that asylum seekers' secondary movements will not any longer pose a threat for the borderless Schengen area.

To answer this question it is worth understanding what an operational Dublin transfer system exactly does. Since an operational transfer system provides popular destination member states of secondary movements with the possibility to transfer asylum seekers back to their member state of first arrival, it basically provides these member states with an alternative to the adoption of internal border controls to manage the number of asylum seekers that are illegally present on their territory. Such a system would therefore guarantee that hosted asylum seekers in the EU do not pose a threat to the borderless Schengen Area if destination member states of secondary movements are willing to exclusively rely on the Dublin transfer system to control the number of asylum seekers on their territory. One needs therefore to review the relative costs of both options to see whether asylum seekers do not any longer pose a threat to the borderless Schengen Area after the Dublin transfer system successfully has been rehabilitated. My analysis in the chapter indicates that asylum seekers will not any longer pose a threat for the borderless Schengen Area if asylum seekers exclusively engage in secondary movements for the motive of asylum shopping (i.e. to be legally hosted in another member state than their member state of first arrival). A same conclusion can however not be drawn if asylum seekers are motivated to engage in secondary movements for the motive of residing with an irregular status in another member state than their member state of first arrival.

Importantly, both asylum seekers with strong claims and asylum seekers with weak claims might be interested engaging in secondary movements for the purpose of residing with an irregular status in a different member state than their member state of first arrival. Given that with an operational Dublin transfer system it probably does not make much sense for asylum seekers with strong claims to engage in secondary movements for the purpose of asylum shopping²⁴⁹, they might instead engage in

²⁴⁹ An operational transfer system ensures that apprehended asylum seekers can easily be transferred back to their member state of first arrival after they have been apprehended. Since asylum seekers need to present themselves to the authorities of the destination member state if they want to apply for asylum there, this member state will be able to easily apprehend them and transfer them back. Asylum seekers will therefore

secondary movements for the purpose of residing with an irregular status in a new member state. Asylum seekers with weak claims are any way only interested in engaging in secondary movements for the purpose of residing with an irregular status in another member state than their member state of first arrival. The reason is that they are aware of the fact that it is likely that their asylum claim is rejected if they remain in any asylum procedure.

The findings from chapter 3 highlight the difficulty of guaranteeing a borderless Schengen Area in a CEAS that concentrates asylum duties in a limited number of member states and does not consider the preferences of asylum seekers on where they would like to be hosted. As already described such a system creates strong incentives for asylum seekers not to adhere to the Dublin system and for member states at the EU's external border to facilitate this. The analysis shows that if the European Commission successfully cuts off the prime reason for asylum seekers to engage in secondary movements (being legally hosted in their preferred member state / asylum shopping), asylum seekers might reorient themselves and move for a different reason (residing with an irregular status in their preferred member state). Member states at the EU's external border can influence asylum seekers' willingness to engage in secondary movements for this new purpose by providing good asylum conditions²⁵⁰ and adopting policies that make it difficult for asylum seekers to move into irregularity. Due to the Dublin system they do not have an interest in implementing these policies, however.

Turning to the development of humanitarian crises indicates that the Dublin system creates incentives for member states at the EU's external border to adopt non-entrée policies that increase the risk of the development of these crises. In chapter 2, I have provided the explanation in the literature that the combination of a large number of asylum seekers residing in the countries surrounding Syria, underfunded asylum projects in these countries, and limited resettlement opportunities to the EU, caused a situation in which a large number of asylum seekers undertook a dangerous and risky journey to reach the EU with the goal of applying for asylum. If we look more closely to the numbers after the 2015/2016 EU Asylum Crisis, then we see that despite the large number of asylum seekers arriving on EU territory during the recent 2015/2016 EU Asylum Crisis the majority of Syrian asylum seekers in 2020 is still hosted in the region (see table 8). Since it is unlikely that these countries alone will be able to provide asylum conditions that meet the international asylum standard for the number of refugees that they need to host, the international community would need to step in. International programs continue to remain largely underfunded however. The United Nations Office for the Coordination of

realise that engaging in a secondary movement for the purpose of asylum shopping will not make much sense any longer.

²⁵⁰ Recall that asylum seekers compare the expected utility level of being hosted in a regular manner in their member state of first arrival with the expected utility level of being hosted in an irregular manner in another member state.

Humanitarian Assistance (UNOCHA) reported in 2018 furthermore that for Syria only 51% of the required funding had been received (and for the Syrian Regional Refugee and Reliance Plan only 54%).²⁵¹ These factors together indicate that the underlying factors that have caused the humanitarian crisis in the Mediterranean Sea during the 2015/2016 EU Asylum Crisis have not fundamentally changed.

Table 8: the number of Syrians hosted in the region and in the EU in 2020	
Turkey	3.643.704
Lebanon	865.531
Jordan	66.279
Iraq	242.163
Egypt	130.577
Total in the region	4.948.254
EU	1.226.890
Source: the number of Syrian hosted in the region is based on data from the UNHCR (see http://data2.unhcr.org/en/situations/syria). The number of Syrians hosted in the EU is arrived at by summing the number of asylum applications by Syrians in the EU (+ Iceland, Liechtenstein, Norway and Switzerland) over the period 2011-2020. This data is retrieved from Eurostat (data code: MIGR_ASYAPPCTZA).	

In chapter 4, I observed an Italian policy trend between 2014 and 2020 in which Italy increasingly adopted policies to prevent migrants from successfully crossing the Central Mediterranean Sea and accessing Italian territory. As an explanation I posed that a fear for new asylum duties could provide an explanation for this policy trend. The core of the explanation is that after years of large numbers of irregular arrivals and asylum applications in Italy, Italy increasingly felt the need to adopt policies to control its level of asylum duties. The irony is that the better the Dublin system functions (in terms that the hosted asylum seekers in the EU follow the EU mobility rules) the closer the link between irregular arrivals and asylum applications in Italy. It means that Italy is more prone to prevent large numbers of irregular arrivals on its territory if the Dublin system functions better and, for this reason, will be more inclined to adopt new non-entrée policies. These policies are problematic because they increase the risk of humanitarian crisis. This is because it either becomes more likely that migrants do not survive a dangerous trip to the EU or if asylums seekers are effectively deterred from undertaking the trip, it becomes more likely that they will remain in a risky position in an unstable region. It should furthermore be noted that states in the past have effectively designed new non-entrée policies after old ones had become less effective due to legal and practical barriers (Gammeltoft-Hansen, 2014, p.586-587; Gammeltoft-Hansen and Hathaway, 2015). It indicates that the European Commission if it wants to prevent the adoption of non-entrée policies by means of enforcement, it will likely face a

²⁵¹ See UNOCHA's report "World Humanitarian Data and Trends 2018". The report furthermore reports that with the amount of funding in 2017 there was \$119 per Syrian refugee from general humanitarian assistance and \$134 from the Syrian Regional Refugee and Reliance Plan.

cat-and-mouse game by addressing current types of non-entrée policies on which member states will respond by inventing new ones.

2. Research question 2

In the second part of this dissertation I aimed to offer an answer to the following question:

“Would it be possible to adopt an alternative EU asylum allocation system that is better able to avoid future asylum crises?”

This involves a normative analysis on whether the adoption of an alternative EU asylum allocation system might contribute to the prevention of future EU asylum crises. I have identified three weaknesses of the Dublin system that make the development of future humanitarian and Schengen crises more likely to occur. In chapter 6, I have offered a positive analysis on the extent to which replacing the Dublin system for a (tradable) quota system contributes to preventing future EU asylum crises. I opted for evaluating the adoption of a (tradable) quota system (as suggested by Fernández-Huertas Moraga and Rapoport (2014, 2015) and Jones and Teytelboym (2017a, 2017b)) because it is a popular suggestion offered in the literature.²⁵² The reason is that it offers a solution to one of the main problems of the Dublin system: the lack of burden-sharing with respect to the EU’s asylum duties.

2.1. Factors that contribute to the prevention of future EU asylum crises

The analysis in chapter 6 shows that after the replacement of the Dublin system by a (tradable) quota system there still remain risks that can result in future EU asylum crises if they remain unaddressed. It is, based on this analysis, nevertheless possible to draw three general conclusions on the characteristics of an EU asylum system that contributes to the goal of preventing future EU asylum crises.

- 1) The importance of burden sharing of hosting and return duties.

Under the Dublin system member states at the EU’s external border were inclined to adopt wave-through and / or non-entrée policies to escape from hosting and return duties. The adoption of an EU asylum allocation system that provides more burden-sharing with respect to these duties contributes therefore to the goal of preventing future EU asylum crises. The reason is that, on the assumption that member states want to contribute to the CEAS by hosting refugees and returning rejected asylum applicants but are only willing to do this up to a certain level, it is less likely that member states will

²⁵² Notable scholars that mention the potential of this system include for instance Dustmann et al. (2017, p.532-533), Bauböck (2018, p.148-149) and Thielemann (2018, p.78).

feel the need to adopt policies (i.e. wave-through and non-entrée policies) that address excessive hosting and return duties.

- 2) Control irregular migration throughout the EU by asylum seekers with strong claims: prevent asylum shopping

If the EU succeeds in constructing the CEAS in a way that asylum seekers cannot engage in asylum shopping, then it becomes easier for member states to convince asylum seekers with strong claims to adhere to the EU mobility rules. In the absence of asylum shopping asylum seekers with strong claims might consider not adhering to the EU mobility rules for the purpose of residing with an irregular status in a different member state than they are allocated to. Member states can however relatively easily discourage asylum seekers to do this by offering a good quality of asylum. The reason is that asylum seekers that decide to move into irregularity give up rights that they are entitled to as asylum seekers.²⁵³

As I have furthermore argued in chapter 6 the choice of an EU asylum allocation system can contribute to preventing asylum shopping opportunities (i.e. under a (tradable) quota system it is easier to prevent asylum shopping opportunities than under the Dublin system).²⁵⁴ If the EU asylum allocation system is moreover based on burden-sharing with respect to the EU's asylum duties, then member states will (on the assumption that member states are willing to contribute to the functioning of CEAS but not to an unlimited extent) also be more inclined to provide asylum conditions of good quality.

- 3) Control irregular migration by asylum seekers with weak claims: the importance of burden sharing in institutions that prevent asylum seekers from moving into irregularity.

Asylum seekers with weak claims might want to use the CEAS in order to gain access to the EU. If the EU adopts an EU asylum allocation system based on more burden-sharing, it becomes more likely that member states want to fulfil their task to assess asylum applications and return rejected asylum applicants to their state of origin. For this reason, there is thus not much of a risk that a large number of asylum seekers with weak claims will move into irregularity after they are allocated to the member states. Asylum seekers with weak claims can still pose problems however before they are allocated. The reason is that they can try to enter the EU unnoticed or, in the situation they do not manage to

²⁵³ Note that this is not the case if asylum shopping still is a possibility for asylum seekers. The reason is that in the case that asylum shopping is still an option asylum seekers will compare the expected utility level of receiving asylum in the member state that they are allocated to with the expected utility level of receiving asylum in another member state. In contrast, if asylum shopping is not an option then asylum seekers will compare the expected utility level of receiving asylum in the member state that they are allocated to with the expected utility level of residing with an irregular status in a different member state.

²⁵⁴ See subsection 5.2. of chapter 6.

do so but are allowed entry to the EU (as a result of applying for asylum), they can abscond before they are allocated to a member state. The reason for the latter is that after arrival in the EU it might take some time before asylum seekers are allocated to the member states.²⁵⁵ The EU needs to guarantee effective external border management and adopt institutions that ensure that asylum seekers cannot abscond before they are allocated to the member states in order to prevent asylum seekers with weak claims from moving into irregularity in the EU. To increase the likelihood that member states will voluntarily contribute to the implementation of these institutions it is important that the responsibilities with respect to the implementation of these institutions are shared between member states.²⁵⁶

2.2. Different models of EU asylum allocation systems that provide burden-sharing

There are different ways of constructing an EU asylum allocation system based on more burden-sharing. Money sharing and people sharing are two potential options that can be used to do this (Thielemann, 2005, 814-815; 2018, p.70-71). A quota system is a typical example of people sharing (as long as the distribution key aims at offering burden-sharing) because it aims at distributing asylum responsibilities in a more equal manner over the different member states. By means of money sharing it is however also possible to design an EU asylum allocation system that provides burden-sharing even if asylum duties are unequally distributed over the member states. Two examples of EU asylum allocation systems that in practice are likely to involve an unequal distribution of asylum responsibilities are the Dublin system and a system in which asylum seekers have a free choice in which member state they are hosted. Burden-sharing can then be provided if member states that have fewer asylum responsibilities financially compensate the member states that have more asylum responsibilities. A limitation of money sharing is however that not all costs related to bearing asylum responsibilities are financial (Thielemann, 2018, p.71).

2.3. Why Law & Economics is useful to evaluate the effectiveness of policy proposals

In this dissertation I focussed on how the choice of the EU asylum allocation system influences the probability that future EU asylum crises will arise. A Law & Economics methodology was useful for doing this. The reason is that an economic view on the law is useful because it helps to make behavioural predictions on how actors will act in a certain legal context (Cooter and Ulen, 2016, p.3-4). By using a set of (reliable) assumptions on preferences of both member states and asylum seekers I aimed at relating (some of) the undesirable events during the 2015/2016 EU Asylum Crisis to how

²⁵⁵ In the case of the tradable quota system that I described in chapter 6 asylum seekers are for example only allocated to the member states after they have been recognised as refugees.

²⁵⁶ See chapter 6 in subsection 5.3. for a description of the problem of a lack of burden-sharing with respect to the EU's external border management.

the CEAS allocates asylum responsibilities to the member states based on the Dublin system and pointing out issues that the EU faces as long as it maintains the Dublin system.

In the second part, I used the same assumptions to predict how the behaviour of asylum seekers and refugees would change if the Dublin system was replaced by a (tradable) quota system. This provided informative predictions on what the introduction of such a system solves and what would remain deficits in the design of the CEAS. If the EU adopts a similar methodology as I did in this dissertation, it can thus predict how asylum seekers and member states will respond to a change in the legal framework of the CEAS. This provides the EU with a more informed choice on how it can effectively design a CEAS that contributes to preventing future EU asylum crises.

3. The Ukrainian exodus and the Temporary Protection Directive

The research of this dissertation has been concluded before the Ukrainian War started and therefore it does not fall within the scope of this dissertation. Nevertheless, I will apply the main findings of this dissertation to provide some reflections on the EU's choice to activate the Temporary Protection Directive as a response to Ukrainian exodus after the Russian Republic invaded Ukraine in February 2022.

3.1. The activation of the Temporary Protection Directive

In response to the Ukrainians fleeing their country the EU activated the Temporary Protection Directive in March 2022.²⁵⁷ The Temporary Protection Directive provides a framework for a possible temporary protection system that can be adopted after a mass influx of displaced persons into the EU (Peers, 2022). The consequence of the activation of this Directive is “an immediate group-based protection status granting residence permits to beneficiaries” (Carrera et al., 2022, p.9). The activation of the Directive requires an EU Council decision adopted by a qualified majority that establishes the existence of such a mass influx.²⁵⁸ The triggering of the Temporary Protection Directive is thus in the hands of the EU member states (Carrera et al., 2022, p.10). On the 4th of March 2022 the EU Council activated the Temporary Protection Directive for people fleeing from Ukraine.²⁵⁹

The Temporary Protection Directive provides a set of rights to Ukrainians in the member state that provides the temporary protection that include immediate access to employment²⁶⁰, the provision of

²⁵⁷ See chapter 3 of the CEPS research report by Carrera et al (2022) for an elaborate overview on this act

²⁵⁸ Article 5 sub 1 of Directive (EU) No 2001/55 (Temporary Protection Directive).

²⁵⁹ COUNCIL IMPLEMENTING DECISION (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

²⁶⁰ Article 12 of Directive (EU) No 2001/55 (Temporary Protection Directive).

suitable housing²⁶¹ and access to education for minors.²⁶² The allocation of temporary protection duties occurs based on a solidarity regime between member states²⁶³, which Carrera et al (2022, p.10) describe as a “a quasi-relocation system” that allows member states to shift temporary protection duties as long as the persons involved consent that they are reallocated to another member state. In the EU Council Decision the member states expressed that, since Ukrainian nationals are visa free travellers in the EU, they are allowed to choose freely in which member state they want to enjoy their temporary protection status.²⁶⁴ In principle, temporary protection status has a duration of one year but can be prolonged up to three years.²⁶⁵ Finally, temporary protection status does not replace refugee protection status²⁶⁶ meaning that the person can apply for the latter ‘at any time’ during the time that they enjoy temporary protection status (Peers, 2022).

3.2. Some Reflections

This dissertation offers in particular interesting insights for the choice of the Temporary Protection Directive to provide:

- 1) Allocation based on the free choice of Ukrainians
- 2) Immediate access to the labour market of the host state.

3.2.1. Allocation based on the free choice of Ukrainians

The activated Temporary Protection Directive provides free choice to Ukrainians on in which member state they would like to be hosted. The question is what kind of incentives this creates for both Ukrainians and member states. All Ukrainians can enjoy temporary protection status in their favourite member state due to the fact that the Temporary Protection Directive provides group-based protection to all Ukrainians (i.e. every Ukrainian qualifies for temporary protection status a result of being Ukrainian). In other words, independent of which member state they will go to, they will receive this status. Following the rational choice framework of this dissertation they will choose the member state that provides them with the highest level of expected utility, which is for instance influenced by the likelihood that they can find employment and the presence of social networks in their host state. In other words, according to this framework they will choose for temporary protection status in the member state in which they expect that this will provide them the highest quality of life.

²⁶¹ Article 13 of Directive (EU) No 2001/55 (Temporary Protection Directive).

²⁶² Article 14 of Directive (EU) No 2001/55 (Temporary Protection Directive).

²⁶³ Article 25 of Directive (EU) No 2001/55 (Temporary Protection Directive).

²⁶⁴ Preamble under 16 of the COUNCIL IMPLEMENTING DECISION (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

²⁶⁵ Article 4 of Directive (EU) No 2001/55 (Temporary Protection Directive).

²⁶⁶ Article 3 of Directive (EU) No 2001/55 (Temporary Protection Directive).

With respect to incentives for member states I have argued that member states in principle want to contribute to providing protection to Ukrainians but not to an unlimited extent.²⁶⁷ A key assumption that I used throughout my dissertation, which results into my main argument in favour of burden-sharing of the EU's asylum duties, is that member states generally will become increasingly unwilling to provide protection for new people if the level of asylum duties that they are responsible for increases. In other words, if all Ukrainians would opt to stay in Poland, then, following the rationale of my key assumption, it is to be expected that Poland becomes increasingly hesitant to accept responsibility for new Ukrainians and it would start to pursue policies that encourage Ukrainians not to stay in Poland. This might for instance imply that Poland will put less effort in helping Ukrainians integrate into its labour market or find decent housing. Since the EU suffers from an enforcement problem²⁶⁸ and doing less effort might even be in the grey area of what is legally permitted, there is a risk that popular countries will provide living standards at the bare minimum that they need to provide (and in the case of enforcement problems even below this minimum). This dynamic can most likely (at least partially) be avoided if non-popular member states directly or through the EU provide financial compensation to popular member states. The fact that member states will be supported by EU funds (more particularly the Asylum, Migration and Integration Fund) to fulfil their duties under the Temporary Protection Directive is in this context a good sign.²⁶⁹

3.2.2. Immediate access to the labour market of the host state

The fact that the Temporary Protection Directive provides immediate access to the labour market is positive for economic integration purposes. In chapter 5, I have discussed that the main driver of the fiscal impact of hosting a refugee is the pace at which the refugee manages to find employment in its host state.²⁷⁰ Temporarily blocking access for Ukrainians to the labour market, as would be the case if Ukrainians would need to apply for asylum in the normal EU asylum procedure, would simply slow down the pace in which the Ukrainians would manage to find employment in their host state.

4. Opportunities for further research

This dissertation has aimed to offer some novel insights on how the choice of EU Asylum Allocation System creates incentives for asylum seekers and member states to behave in a way that increases

²⁶⁷ See chapter 1, subsection 5.3.

²⁶⁸ See chapter 2, subsection 4.2.3.

²⁶⁹ Preamble under 16 of the COUNCIL IMPLEMENTING DECISION (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

²⁷⁰ From the analysis followed for instance that improved quantitative labour market integration of refugees (providing a job to a non-working refugee) has a more positive impact on the treasury than improved qualitative labour market integration (i.e. improving the quality of the job match of an already working refugee). See chapter 5, subsection 5.2.3., for this analysis.

the risk of future EU asylum crisis. In this dissertation, I offered analyses of how the Dublin system and (a) tradable quota system create incentives for both asylum seekers and member states and how this relates to risk that future EU asylum crises will develop. An important normative conclusion that follows from this analysis is the importance of burden-sharing of the EU's asylum duties between its members states. As I pointed out in subsection 2.3. of this chapter burden-sharing of the EU's asylum duties can be reached through different types of EU asylum allocation systems. The first idea for future research is to make the normative recommendation more specific by comparing different types of EU asylum allocation models, analyse in a systematic way the incentive effects that they create (for both asylum seekers and member states) and compare the outcomes. I suggested for instance the possibility of system that leaves asylum seekers a complete free choice on where they would like to be hosted in the EU combined with a financial compensation system for member states that bear a disproportionate level of the hosting duties. How does this influence the behaviour of asylum seekers and member states as compared under the Dublin system or a (tradable) quota system? A comparative analysis of different options will likely contribute to provide more concrete policy recommendations on the design of the EU asylum allocation system.

The second idea for future research is farther removed from the scope of this research in the sense that it does not relate to the question on how to allocate the EU's asylum duties to member states. The European Parliamentary Research Service warned in 2021 that climate migration will likely become an important challenge for the EU that has not yet been addressed in EU asylum legislation.²⁷¹ Until now the EU policy approach with respect to climate migration is focused on slowing down climate change.²⁷² It is however also important to start thinking about how to deal with climate migration if we are not sufficiently able to slow down climate change. It means that the EU has to consider how it wants to deal with climate migrants arriving at its shores. Although an important open question with respect to the design of EU asylum legislation is the extent to which there rests a moral obligation on the EU to host arriving climate migrants (is this for instance the same as for migrants fleeing a war?), from a Law & Economics perspective an interesting consideration might also be how climate migrants are expected to behave if the EU does not acknowledge climate refugees. Following the analysis of this dissertation they might still opt to move to the EU. In absence of a legal title to stay in the EU they might still consider to come for the motive of moving into irregularity if the expected utility of staying illegally in an EU member state exceeds the expected utility of staying legally in their state of origin. Since climate change reduces the expected utility of staying in their state of origin, moving to the EU

²⁷¹ European Parliamentary Research Centre, The Concept of 'Climate Refugee': Towards a Possible Definition, October 2021, p.10-11.

²⁷² European Parliamentary Research Centre, The Concept of 'Climate Refugee': Towards a Possible Definition, October 2021, p.10.

in order to stay there on an irregular status might become an increasingly interesting option. If climate change continues and EU asylum legislation does not address climate migration, there might thus be a risk that an increasing number of climate migrants will try to move to the EU and move into irregularity.

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European Court of Human Rights (ECtHR), *Tarakhel v. Switzerland and Italy*, application no. 29217/12, judgment of 4 November 2014.

Appendix

Appendix.1. (appendix to chapter 4)

A.1. Calculation of the development of the stock of asylum duties

Inflow

The inflow of asylum duties is based on Eurostat Data on the number of accepted asylum applications.²⁷³ See in the first row of the table below the number of accepted asylum applications as reported by Eurostat. In the second row, I provided an approximation of what would have happened if the Italian government did not adopt policies to avoid new arrivals. The approximation is simply that the number of accepted asylum applications in 2019 and 2020 would be equal to the average of accepted asylum applications between 2015 and 2018.

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Number of accepted asylum applications	9.060	4.300	7.145	22.025	14.390	20.580	29.615	35.405	31.795	30.670	18.375	11.585
Number of accepted asylum applications in absence of non-entrée policies (2019 and 2020 equals the average between 2015 and 2018)	9.060	4.300	7.145	22.025	14.390	20.580	29.615	35.405	31.795	30.670	31.871	31.871

²⁷³ First instance decisions on asylum applications by type of decision - annual aggregated data [TPS00192]

Outflow

The outflow of asylum duties both consists of a proportion of the annual inflow. In the baseline scenario this is 10%.

A1.2: the approximated outflow of Italy's hosting duties (period 2009:2020)												
Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Outflow 20%		1812	2310	3277	7026	8499	10915	14655	18805	21403	23257	22280
Outflows 20% without non-entrée policies		1812	2310	3277	7026	8499	10915	14655	18805	21403	23257	24979
Outflow 10%		906	1245	1835	3854	4908	6475	8789	11451	13485	15204	15521
Outflow 30%		2718	3193	4378	9672	11088	13935	18639	23669	26107	27476	24746

The development of the stock of asylum duties (2009-2010)

The stock of asylum duties in a given year is calculated as follows:

$$Stock_t = Stock_{t-1} + Inflow_t - Outflow_t$$

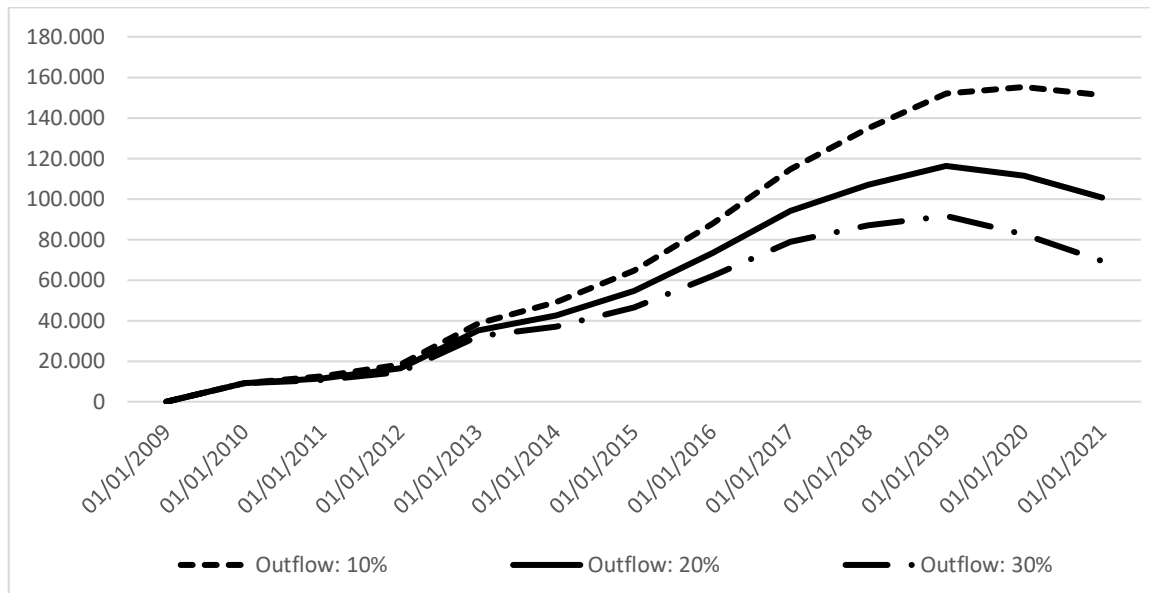
The stock in 2009 is assumed to be zero (this implies that $Stock_{2010} = Inflow_{2009} - Outflow_{2009}$).

Figure A1.3: the approximated stock of Italy's hosting duties (period: 01/01/2009-01/01/2021)													
Year	01/01/2009	01/01/2010	01/01/2011	01/01/2012	01/01/2013	01/01/2014	01/01/2015	01/01/2016	01/01/2017	01/01/2018	01/01/2019	01/01/2020	01/01/2021
Approximated stock (20% outflow)	0	9.060	11.548	16.383	35.132	42.495	54.576	73.276	94.026	107.016	116.283	111.401	100.706
Approximated stock (20 % outflow without non-entrée policies)	0	9.060	11.548	16.383	35.132	42.495	54.576	73.276	94.026	107.016	116.283	124.897	131.789
Approximated stock (10% outflow)	0	9.060	12.454	18.354	38.543	49.079	64.751	87.891	114.507	134.851	152.036	155.207	151.272
Approximated stock (30% outflow)	0	9.060	10.642	14.594	32.241	36.959	46.451	62.131	78.897	87.023	91.586	82.485	69.325

A.2. Alternative scenario's

I developed two alternative scenarios by varying the outflow rate: 10%, and 30%. By performing the same analysis as for the baseline scenario it is possible to construct the following graph. As one can see the pattern of the development of hosting duties is very similar to the baseline scenario.

Figure A1.1: The estimated development of hosting duties (2009-2020)



Appendix.2. (appendix to chapter 5)

As appears from equation (5) I use four variables to approach the fiscal impact of a hosted refugee in a member state by number of years after arrival:

1. The probability of employment ($E_{ms,t}$, varies between member states and over time).
2. The fiscal contribution if a refugee works (B_{ms} , varies between member states but constant over time). This depends on the member states' tax regime.
3. The fiscal cost if a refugee does not work (C_{ms} , varies between member states but constant over time). This depends on the member states' welfare regime.
4. The fiscal cost independent of whether a refugee works (O_{ms} , varies between member states but constant over time). This depends on the extent in which member states' provide public goods to their citizens.

A.1. Construction of variables

In this part, I describe how I measured the four variables.

A.1.1. The probability of employment ($E_{ms,t}$)

To approach the probability of employment in a member state given the number of years of residence in the member state I use two data sources from the OECD report "*How are refugees faring on the labour market in Europe*" (2016): the employment rate of refugees by the number of years after their arrival in 2014 (see table A.1.) and the general employment rate of refugees on the member state level in 2014 (without taking into account the number of years of residence) (see table A.2.).

Number of years after arrival	0-4 years	5-9 years	10-14 years	15-19 years	20+ years
Average employment rate	25%	40%	55%	60%	65%

Country	Employment rate refugees in general by member state	Index (employment relative to employment rate of EU)
Switzerland	66%	1,18
Sweden	58%	1,04
France	58%	1,04
Austria	58%	1,04
Germany	58%	1,04
Norway	56%	1,00
Portugal	54%	0,96

United Kingdom	52%	0,93
Belgium	46%	0,82
Finland	42%	0,75
Spain	40%	0,71
EU	56%	1

By combining table A.1. and table A.2. it is possible to construct an estimate of the employment rate of refugees by the number of years after their arrival on the member state level. The estimates are reported in table A.3.

Country	0 to 4 years	5 to 9 years	10 to 14 years	15 to 19 years	20+ years
Switzerland	29%	47%	65%	71%	77%
Sweden	26%	41%	57%	62%	67%
France	26%	41%	57%	62%	67%
Austria	26%	41%	57%	62%	67%
Germany	26%	41%	57%	62%	67%
Norway	25%	40%	55%	60%	65%
Portugal	24%	39%	53%	58%	63%
United Kingdom	23%	37%	51%	56%	60%
Belgium	21%	33%	45%	49%	53%
Finland	19%	30%	41%	45%	49%
Spain	18%	29%	39%	43%	46%

A.1.2. Annual contribution to the treasury if a refugee works (B_{ms})

The first data source that I use to approach the annual contribution of a working refugee (in real terms) is data on hourly labour costs (HLC) in 2016 provided by Eurostat (2014 was the year closest to 2014, data code: LC_LCI_LEV). The hourly labour costs are in nominal terms and do therefore not take into account that the value of a € varies in different member states due to price differences between the member states. I multiply this number with a fraction of approximately 0,63 to take into account that refugees usually find jobs that are paid less than the average wage in the country (the fraction is derived from the report by Salikutluk et al. (2016, p.412) who based on German panel data found that refugees on average earn €1.632 per month while natives on average earn €2.597 (i.e. $\frac{1.632}{2.597} \approx 0,63$)). The second data source that I use is data on the tax wedge in 2014 from the OECD (<https://data.oecd.org/tax/tax-wedge.htm>). By multiplying the hourly labour costs (in nominal terms) with the tax wedge I find how much a working person contributes to the treasury for every hour worked. I multiply this number with 2.080 (this reflects the number of hours worked in a year for a

forty hour work week) to find how much a working person contributes to the treasury on an annual basis (in nominal terms). A third data source I rely on is Eurostat's price index in 2014 (data code: prc_ppp_ind). By using this price index I can translate nominal amounts into real terms. In this index, a score of 100 reflects the price level in the average EU member state. A score that exceeds 100 shows therefore that the member state is more expensive than the average EU member state. In contrast, if the score falls below 100, it means that the member state is less expensive than the average EU member state. The annual contribution of a working refugee to the treasury in real terms is calculated in the following way: $B_{ms} (real\ terms) = \frac{B_{ms} (nominal\ terms)}{price\ index_{ms}}$.

Table A2.4: The fiscal contribution if a refugee works (B_{ms})					
Country	Hourly labour costs (nominal terms)	Tax wedge	Paid tax per hour (nominal terms)	Paid tax per year (nominal terms)	Paid tax per year (real terms) = B_{ms}
Switzerland	€35,18	22%	€7,69	€16.004,25	€11.183,96
Sweden	€23,86	42%	€10,13	€21.071,00	€16.196,00
France	€21,89	48%	€10,59	€22.036,36	€20.124,53
Austria	€20,57	49%	€10,16	€21.138,82	€19.518,76
Germany	€20,76	49%	€10,24	€21.290,09	€20.412,36
Norway	€31,20	37%	€11,51	€23.947,17	€15.901,18
Portugal	€ 8,61	41%	€3,54	€7.362,33	€9.378,76
United Kingdom	€17,66	31%	€5,47	€11.368,06	€9.674,94
Belgium	€24,43	56%	€13,58	€28.244,77	€26.032,05
Finland	€21,33	44%	€9,30	€19.337,70	€15.721,70
Spain	€13,42	41%	€5,46	€11.361,46	€12.651,96

A.1.3. Annual costs to the treasury if a refugee does not work (C_{ms})

I use the Social Assistance and Minimum Income Protection (SAMIP) dataset to approach the annual costs to the treasury to a non-working refugee. The SAMIP dataset collects the minimum income protection for a single person household without children (MIPsi), for a lone parent type-case (MIPlp) and for a two-parent family type-case (MIPfa). The variable MIPavey provides the average of these three types of households. I use the variable MIPavey. This number is in nominal terms. I use a similar calculation as before to translate this amount in nominal terms to real terms by using Eurostat's price index.

Table A2.5: The fiscal cost if a refugee does not work (C_{ms})		
Country	Annual minimum income Protection (nominal terms)	Annual minimum Income Protection (real terms) = C_{ms}
Switzerland	€30.731,63	€21.475,63
Sweden	€20.810,54	€15.995,81
France	€13.840,16	€12.639,42
Austria	€19.042,53	€17.583,13
Germany	€19.642,01	€18.832,23
Norway	€27.954,18	€18.561,87
Portugal	€4.020,19	€5.121,26
United Kingdom	€15.884,52	€13.518,74
Belgium	€15.737,91	€14.504,99
Finland	€21.950,28	€17.845,76
Spain	€6.697,29	€7.458,01

A.1.4. Annual costs to the treasury independent of whether a refugee works (O_{ms})

The expenditures of a government on public goods usually tend to increase in the number of people that use this public good increases. I collect data from Eurostat on the total annual government expenditures on public order and security, health and education in 2014 (data code: gov_10a_exp). I divide this number with the population size of the member state in 2014 to get an estimate of the expenditures per person (data code: demo_pjan). The numbers are in nominal terms and I use again Eurostat's price index to find the annual total expenditures on public goods in real terms.

Table A2.6: The fiscal cost independent of whether a refugee works (O_{ms})					
Country	Annual public order and security expenditures per person (nominal terms)	Annual health expenditures per person (nominal terms)	Annual education expenditures per person (nominal terms)	Annual total expenditures per person (nominal terms)	Annual total expenditures per person (real terms) = O_{ms}
Switzerland	€1.093,70	€1.411,35	€ 3.616,90	€6.121,95	€4.278,09
Sweden	€600,50	€3.144,98	€ 2.960,15	€6.705,62	€5.154,21
France	€530,47	€2.660,66	€ 1.783,47	€4.974,60	€4.543,01
Austria	€520,62	€3.100,83	€ 1.932,14	€5.553,58	€5.127,96
Germany	€565,09	€2.593,27	€ 1.562,47	€4.720,84	€4.526,21
Norway	€753,41	€5.690,83	€ 3.771,17	€10.215,41	€6.783,14
Portugal	€315,34	€1.044,16	€881,18	€2.240,68	€2.854,36
United Kingdom	€689,93	€2.687,55	€ 1.920,80	€5.298,28	€4.509,17
Belgium	€659,32	€2.894,87	€ 2.274,32	€5.828,52	€5.371,90
Finland	€487,59	€2.964,26	€ 2.406,41	€5.858,27	€4.762,82
Spain	€444,64	€1.365,38	€914,86	€2.724,88	€3.034,38

A.2. Estimation of fiscal impact of hosting refugees

In this part, I will use the data collected on the four variables to fill in equation (5) from the main text. As discussed in the main text I use the following formula to estimate fiscal impact of a hosted refugee by the number of years that he resides in this member state:

$$\text{Annual Net Contribution}_{ms,t} = e_{ms,t} \times B_{ms} - (1 - e_{ms}) \times C_{ms} - O_{ms}$$

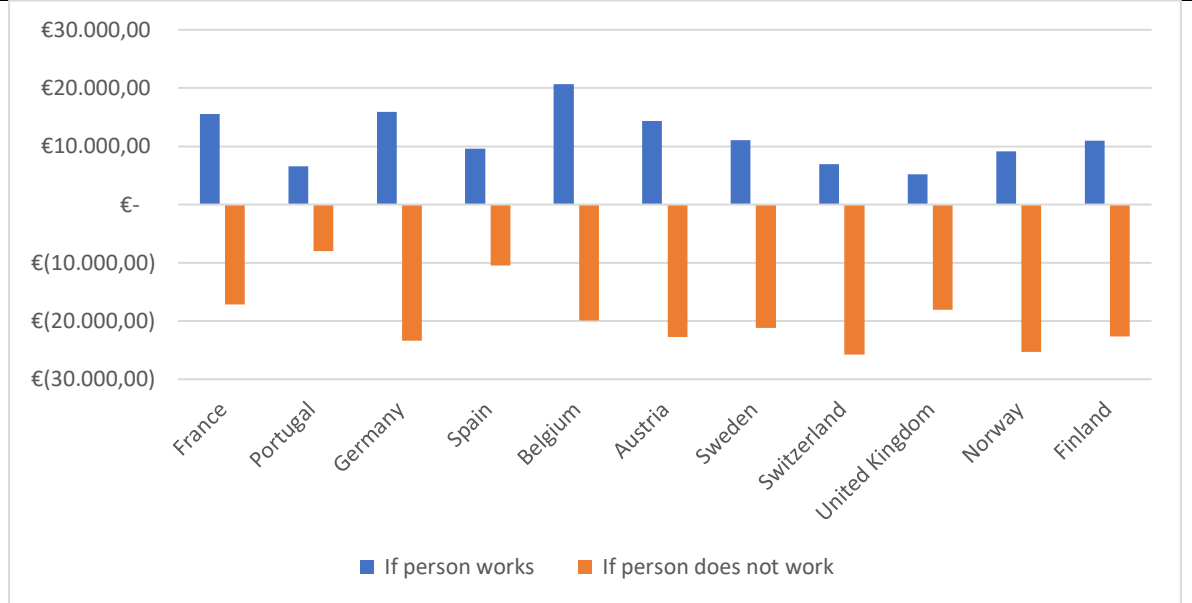
I discussed how I gathered data on all these variables for all the eleven member states. In table A.7. I provide for every member state the annual net contribution of a hosted refugee by the number of years after his arrival.

	0-4 years	5-9 years	10-14 years	15-19 years	20+ years
Switzerland	€-16.130,81	€-10.357,06	€-4.583,31	€-2.658,72	€-734,14
Sweden	€-12.814,63	€-7.813,41	€-2.812,18	€-1.145,10	€521,97
France	€-8.698,90	€-3.608,79	€ 1.481,32	€3.178,03	€4.874,73
Austria	€-13.104,35	€-7.340,31	€-1.576,27	€345,08	€2.266,43
Germany	€-13.196,89	€-7.099,97	€-1.003,04	€1.029,27	€3.061,58
Norway	€-16.729,25	€-11.559,79	€-6.390,34	€-4.667,18	€-2.944,03
Portugal	€-4.480,09	€-2.382,76	€-285,44	€413,67	€1.112,78
United Kingdom	€-12.643,67	€-9.413,12	€-6.182,57	€-5.105,72	€-4.028,87
Belgium	€-11.552,32	€-6.557,58	€-1.562,84	€102,08	€1.766,99
Finland	€-16.314,68	€-12.538,34	€-8.762,00	€-7.503,22	€-6.244,44
Spain	€-6.901,33	€-4.746,69	€-2.592,05	€-1.873,84	€-1.155,62

Based on table A.7. it is a simple task to calculate the accumulated fiscal impact by the number of years after his arrival. I provide these numbers in table A.8.

	5 years	10 years	15 years	20 years	25 years
Switzerland	€-80.654,03	€-132.439,31	€-155.355,84	€-168.649,45	€ -172.320,15
Sweden	€-64.073,16	€-103.140,19	€-117.201,08	€-122.926,59	€ -120.316,72
France	€-43.494,52	€-61.538,47	€-54.131,86	€-38.241,72	€-13.868,07
Austria	€-65.521,77	€-102.223,33	€-110.104,66	€-108.379,26	€-97.047,11
Germany	€-65.984,46	€-101.484,29	€-106.499,49	€-101.353,14	€-86.045,26
Norway	€-83.646,26	€-141.445,23	€-173.396,91	€-196.732,83	€ -211.452,99
Portugal	€-22.400,43	€-34.314,24	€-35.741,41	€-33.673,05	€-28.109,14
United Kingdom	€-63.218,33	€-110.283,93	€-141.196,77	€-166.725,37	€ -186.869,73
Belgium	€-57.761,60	€-90.549,50	€-98.363,69	€-97.853,30	€-89.018,35
Finland	€-81.573,40	€-144.265,10	€-188.075,10	€-225.591,20	€ -256.813,40
Spain	€-34.506,64	€-58.240,09	€-71.200,34	€-80.569,52	€-86.347,64

Figure A2.1: Annual fiscal impact (depending on employment of the refugee)



I calculated for every member state how much a working refugee annually contributes to or costs the treasury by subtracting the annual overhead costs from respectively the annual income tax that a working refugee pays to the treasury and the annual social welfare benefits that a non-working refugee receives from the treasury.

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I would like to start by thanking the assessment committee for assessing my dissertation. I also would like to thank my PhD supervisors from whom I have learned much over the last couple of years. Michael helped me to provide structure between all my ideas and taught me that sometimes I should take a step back to see the big picture. By always encouraging me to pursue my ideas, Elena taught me not to hesitate too much when I have a good idea and to write it down. Finally, from Paolo I have learned that I should always remain critical of (implicit) assumptions that I make in my argumentations which contributes to the quality of my writing.

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Querría también agradecer a la familia de mi novia, Freicy. Cuando estoy en su hogar siempre me siento como en mi propia casa, debido a su hospitalidad. Mis últimas palabras son para Freicy, porque sin ella, no hubiese podido escribir esta disertación. Querida Freicy: Te conocí en el primer año de mi doctorado y todo tu apoyo y los momentos lindos que vivimos me ayudaron a continuar, perseverar y a avanzar hasta este momento. Solo espero que nuestro futuro continúe así.

Summary

The 2015/2016 EU Asylum Crisis highlighted the malfunctioning of the Common European Asylum System (CEAS). The CEAS aims to ensure that all asylum seekers that manage to file an asylum claim in the EU are hosted in one its member states in a way that at least meets the EU asylum standard. In this dissertation, I focus on a specific component of the CEAS: the EU asylum allocation system. I assess more closely how the way in which the CEAS allocates asylum responsibilities to its member states influences the ability of the CEAS to prevent similar asylum crises in the future. I do this by adopting a Law & Economics methodology based on the rational choice approach. The structure of the Dublin system, the EU's asylum allocation system, survived the 2015/2016 EU Asylum Crisis. For this reason, part I of the dissertation starts with an analysis of the Dublin system. This systems assigns the EU's asylum responsibilities to the member states based on the member state of first-entry criterion.

In chapter 2, I review the literature that explains the 2015/2016 EU Asylum Crisis foremostly as a policy crisis. In this context, it is insightful to distinguish two types of events during this crisis. Firstly, the humanitarian crisis in the Mediterranean Sea. The number of asylum seekers that got into trouble in the Mediterranean Sea substantially increased in the spring of 2015 as a consequence of that an increasing number of asylum seekers undertook a dangerous journey to reach the EU in order to apply for asylum. Secondly, there was a Schengen crisis because an increasing number of asylum seekers decided to ignore the Dublin system and move (against the rules of the CEAS) onwards to member states in Northern Europe. The literature mainly highlights the fact that the Dublin system contributed to the development of the Schengen crisis. The main reason is that the Dublin system overburdens certain member states at the EU's external border if a large number of asylum seekers arrive at their part of the EU's external border. These member states have therefore an interest to engage in so-called wave-through policies by encouraging asylum seekers to ignore the Dublin system and move to their favourite member state by engaging in a so-called secondary movement.

In chapter 3 and 4, I move beyond the 2015/2016 EU Asylum Crisis. In the aftermath of this crisis the European Commission adopted several policies to fix the malfunctioning components of the CEAS with the aim to prevent similar events in the future. One of the main policy goals was the reinforcement of the Dublin system such that asylum seekers that arrive in the EU stay in their member state of first arrival. In chapter 3, I stress the difficulty for the European Commission to reinforce the Dublin system. The main type of wave-through policies during the 2015/2016 EU Asylum Crisis consisted of sabotaging the Dublin transfer system by for instance failing to register arriving asylum seekers. In chapter 3, I point out that if the Commission successfully puts a stop to the wave-through policies that successfully sabotaged the Dublin transfer system, it cannot be ruled out that member states at the

EU's external border will shift to a different type of wave-through policies that might spark similar large-scale secondary movements as during the 2015/2016 EU Asylum Crisis.

In chapter 4, I present a case that the successful reinforcement of the Dublin system yields a risk that member states at the EU's external border will shift to using non-entrée policies. The rationale is that if these member states cannot any longer evade asylum duties after asylum seekers have arrived at their parts of the EU's external border, they might shift to the adoption of policies that prevent asylum seekers from arriving in the first place. The problem of these so-called non-entrée policies is that they make it more difficult for asylum seekers to reach the EU and therefore increase the risk that new forms of humanitarian crises will take place in the future.

Part II of the dissertation moves onward to offering suggestions on the characteristics of an EU asylum allocation system that would facilitate the prevention of future EU asylum crises. In chapter 5, I first evaluate more closely a claim that fires anti-refugee sentiment within societies. It concerns the idea that hosting refugees is inherently costly to their state. In this chapter, I define the main factors that drive the fiscal impact that refugees have on their host state and furthermore provide an order of magnitude of the long-term fiscal impact of hosting a refugee.

In chapter 6, I evaluate a popular suggestion in the literature to replace the Dublin system for a tradable quota system. Many scholars in the field like this idea because this system qualifies as a smart burden sharing tool. The reason is that it does not only spread the EU's asylum duties over the different member states but it moreover also does this by exploiting comparative hosting advantages. Member states that are not in the position to physically host refugees can in their proposal pay other member states for taking charge of part of their asylum responsibilities. Fernández-Huertas Moraga and Rapoport (2014, 2015) elaborately discussed the theoretical desirability of this system. In this chapter, I focus on what it would require to practically implement this proposal. The analysis highlights some remaining shortcomings of the proposal and offers suggestions on how these can be overcome. Finally, I bring the findings of this dissertation together in chapter 7. Building on the analyses on the Dublin system and the tradable quota system I provide some suggestions on characteristics of an EU asylum allocation system that would reduce the risk that new asylum crisis will take place in the future.

Samenvatting

De 2015/2016 EU Asielcrisis legde de kwetsbare punten van het Europese Asielstelsel (Common European Asylum System, vanaf nu: CEAS) bloot. Het CEAS heeft tot doel ervoor te zorgen dat alle asielzoekers die erin slagen een asielaanvraag in de EU in te dienen, worden opgevangen in een van de lidstaten op een manier die ten minste voldoet aan de EU-asielstandaard. In dit proefschrift richt ik mij op een specifiek onderdeel van het CEAS: het EU-asieltoewijzingssysteem. Ik ga nader in op de manier waarop het CEAS asielverantwoordelijkheden toewijst aan de lidstaten en hoe dit van invloed is op het vermogen van het CEAS om soortgelijke asielcrises in de toekomst te voorkomen. Ik gebruik hiervoor een rechtseconomische analyse die gebaseerd is op de rationele keuzebenadering. Het huidige EU-asieltoewijzingssysteem is het Dublin systeem. Om deze reden begint deel I van het proefschrift met een analyse van het Dublin systeem. Dit systeem wijst asielverantwoordelijkheden toe aan de lidstaten op basis van het criterium van de lidstaat van eerste binnenkomst.

In hoofdstuk 2 bespreek ik de literatuur die de 2015/2016 EU Asielcrisis als een beleidscrisis ziet. In dit verband is het verhelderend om een onderscheid te maken tussen twee soorten gebeurtenissen tijdens deze crisis. Ten eerste de humanitaire crisis in de Middellandse Zee. Als gevolg van dat een toenemend aantal mensen Europa probeerde te bereiken om asiel aan te vragen, nam het aantal asielzoekers dat in de Middellandse Zee in de problemen kwam fors toe. Ten tweede was er een Schengencrisis doordat een toenemend aantal asielzoekers besloot het Dublin systeem te negeren en (tegen de regels van het CEAS in) verder te reizen naar lidstaten in Noord-Europa. In de literatuur wordt voornamelijk besproken dat het Dublin systeem heeft bijgedragen aan de ontwikkeling van deze Schengencrisis. De belangrijkste reden is dat het Dublin systeem bepaalde lidstaten aan de buitengrens van de EU overbelast in het geval dat er grote aantallen asielzoekers in een kort tijdsbestek arriveren. Deze lidstaten hebben er daarom een belang bij om een zogenoemd wave-through beleid te voeren dat asielzoekers aanmoedigt om het Dublin systeem te negeren en naar hun favoriete lidstaat te verhuizen.

In de hoofdstukken 3 en 4 bestudeer ik in meer detail hoe het Dublin systeem bijdraagt aan de ontwikkeling van nieuwe asielcrises. In de nasleep van de 2015/2016 EU Asielcrisis heeft de Europese Commissie verschillende beleidsmaatregelen ingevoerd met het doel om vergelijkbare crises in de toekomst te voorkomen. Eén van de belangrijkste beleidsdoelen was het versterken van het Dublin systeem wat inhoudt dat asielzoekers die in de EU aankomen in hun lidstaat van eerste aankomst blijven. In hoofdstuk 3 benadruk ik dat dit een moeilijke taak is voor de Europese Commissie. Lidstaten aan de Europese buitengrens voerden tijdens de 2015/2016 EU Asielcrisis voornamelijk een wave-through beleid dat eruit bestond uit om het Dublin transfersysteem te saboteren door aankomende

asielzoekers niet te registreren. In dit hoofdstuk wijs ik erop dat als de Commissie met succes een einde maakt aan dit type wave-through beleid, deze lidstaten naar aller waarschijnlijkheid op een andere manier zullen proberen om asielzoekers aan te moedigen zich niet aan het Dublin systeem te zullen houden.

In hoofdstuk 4 presenteer ik een casus waaruit blijkt dat de succesvolle versterking van het Dublin systeem het risico met zich meebrengt dat lidstaten aan de buitengrens van de EU over zullen gaan op het gebruik van non-entrée beleid. De gedachte hierachter is dat als deze lidstaten hun asielverantwoordelijkheden niet langer kunnen ontduiken door asielzoekers die hun buitengrenzen hebben bereikt aan te moedigen het Dublin systeem te negeren, ze waarschijnlijk zullen proberen om te voorkomen dat asielzoekers hun buitengrenzen bereiken. Het probleem van het gebruik van non-entrée beleid is dat het voor asielzoekers moeilijker wordt om de EU te bereiken. Dit vergroot het risico dat nieuwe humanitaire crises zich zullen ontwikkelen in de toekomst.

Deel II van het proefschrift gaat nader in op hoe een nieuw EU-asieltoewijzingssysteem kan bijdragen aan het voorkomen van toekomstige asielcrises. In hoofdstuk 5 evalueer ik eerst een claim die bijdraagt aan een anti-vluchtelingensentiment binnen samenlevingen. Het gaat om de stellingname dat het opvangen van vluchtelingen inherent kostbaar is voor de schatkist. In dit hoofdstuk definieer ik de belangrijkste factoren die invloed hebben op de mate waarin het opvangen van vluchtelingen kostbaar is. Daarnaast geef ik een schatting van de mate waarin vluchtelingen, die in het verleden in de EU opgenomen werden, kostbaar waren voor de schatkist van de lidstaat waarin ze werden opgevangen.

In hoofdstuk 6 evalueer ik een populaire suggestie in de literatuur om het Dublin systeem te vervangen voor een verhandelbaar quotasysteem. Een groot probleem van het Dublin systeem is dat het de EU's asielverantwoordelijkheden concentreert in de lidstaten aan de buitengrens wat het risico van overbelasting van deze lidstaten met zich meebrengt. De reden dat dit voorstel populair is, komt voort uit het feit dat dit systeem niet alleen de EU's verantwoordelijkheden spreidt over de lidstaten maar dit bovendien op een slimme manier doet. Hoewel van een theoretisch oogpunt dit idee aantrekkelijk klinkt, is er nog geen literatuur over hoe een dergelijk systeem effectief geïmplementeerd kan worden. De analyse brengt enkele obstakels in beeld en biedt suggesties over de manier waarop deze kunnen worden verholpen. Ten slotte breng ik de bevindingen van dit proefschrift samen in hoofdstuk 7. Voortbouwend op de analyses van het Dublin systeem en het verhandelbare quotasysteem geef ik enkele suggesties voor kenmerken van een EU-asieltoewijzingssysteem die het risico van nieuwe asielcrises verkleinen.

Curriculum vitae

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Short bio	
Jan Essink (Rotterdam, 1991) is a PhD candidate in the European Doctorate in Law & Economics program. Previously he obtained an MSc. in Economics & Business from Erasmus University Rotterdam and an LL.M. in Law & Economics from the universities of Bologna, Ghent and Aix-Marseille. Currently, Jan is working as a Public Policy Consultant in the Security & Justice department of Ecorys.	
Education	
PhD in Law & Economics (European Doctorate in Law & Economics, joint degree at Erasmus University Rotterdam, University of Bologna and University of Bologna).	2017-2022
LL.M. in Law & Economics (European Master in Law & Economics, joint degree at Ghent University, University of Bologna and Aix-Marseille University), Cum Laude	2015-2016
MSc. in Economics and Business (Erasmus University Rotterdam), Cum Laude	2014-2015
BSc. In Economics and Business Economics (Erasmus University Rotterdam)	2010-2014
LL.B. in Dutch Law (Erasmus University Rotterdam)	2010-2014
Work experience	
Public Policy Consultant at Ecorys	2022 - ...
Economic Researcher at Economic Institute for Construction and Housing	2017
Teaching Assistant at Erasmus University Rotterdam	2014-2015
Prizes and awards	
Best thesis award of the European Master in Law & Economics	2016

EDLE PhD Portfolio

Name PhD student:	Jan K. Essink
PhD-period:	2017-2022
Promotors:	Prof. dr. Michael Faure, prof. dr. Elena Kantorowicz-Reznichenko, prof. dr. Paolo Vanin

PhD training

<i>Bologna courses</i>	<i>year</i>
Introduction to Statistics (prof. Alessandra Giavognoli)	2017
European Competition Law (prof. Alberto de Pra)	2017
Experimental Economics (prof. Marco Casari)	2017
Modelling Private Law (prof. Francesco Parisi)	2017
Econometrics III (prof. Chiara Monfardini)	2017
Behavioural Game Theory (prof. Emanuela Carbonara)	2018
Behavioural Law & Economics and Enforcement Mechanisms (prof. Paolo Vanin)	2018
Microeconomics I (prof. Vincenzo Denicolò)	2019
<i>Specific courses</i>	<i>year</i>
German Law – A Comparative Introduction (Hamburg Summer School in Law & Economics, prof. Hannes Rösler)	2018
Topics in International Law and International Relations (Hamburg Summer School in Law & Economics, prof. Rachel Brewster)	2018
The Transformation of Global Environmental Politics (Hamburg Summer School in Law & Economics, prof. Johannes Urpelainen)	2018
The Use of Economics for Understanding Law: a Guided Tour (Hamburg Summer School in Law & Economics, prof. Thomas Miceli)	2018
Seminar ‘How to write a PhD’	2018
Academic Writing Skills for PhD students (Rotterdam)	2018
Migration Summer School (European University Institute)	2019
<i>Seminars and workshops</i>	<i>year</i>
Bologna November seminar (attendance)	2017
BACT seminar series (attendance)	2018-2021
EGSL lunch seminars (attendance)	2018-2021
Joint Seminar ‘The Future of Law and Economics’ (attendance)	2018
Rotterdam Fall seminar series (peer feedback)	2018
Rotterdam Winter seminar series (peer feedback)	2019
<i>Presentations</i>	<i>year</i>
Bologna March seminar	2018
Hamburg June seminar	2018
Rotterdam Fall seminar	2018

Rotterdam Winter seminar	2019
Bologna November seminar	2019
Joint Seminar 'The Future of Law and Economics' (online)	2020
Joint Seminar 'The Future of Law and Economics' (online)	2021
<i>Attendance (international) conferences</i>	<i>year</i>
3 rd annual conference, French Association of Law & Economics (Nancy)	2018
14 th annual conference, Italian Society of Law & Economics (Lecce)	2018
5 th annual conference, French Association of Law & Economics (online)	2020
<i>Teaching</i>	<i>year</i>
Teaching Assistant Macroeconomics	2014, 2015

