Refugee flows to Europe: A critical assessment of the policy-making of the European Union between 2015 and 2016

Gretel Pahmer Sanchez

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Gretel Pahmer Sánchez (Student ID 800140906)

Supervisor: Dr. Marco Pinfari
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<tr>
<td>AMIF</td>
<td>Asylum Migration and Integration Fund</td>
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<td>CEAS</td>
<td>Common European Asylum System</td>
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<td>CFR</td>
<td>Charter of Fundamental Rights</td>
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<td>EASO</td>
<td>European Asylum Support Office</td>
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<td>EC</td>
<td>European Commission</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>EU</td>
<td>European Union</td>
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<td>HR</td>
<td>High Representative</td>
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<td>JHA</td>
<td>Justice and Home Affairs</td>
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<td>MS</td>
<td>Member State</td>
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<td>QMV</td>
<td>Qualified Majority Voting</td>
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<td>SBC</td>
<td>Schengen Borders Code</td>
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<td>TEU</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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Introduction

The European Union has not been able to establish sustainable security policies that provide solutions to the migration crisis since 2015; instead, its actions have caused tensions among Member States and fortified EU’s external borders. The topic of migration and asylum has been central in the EU since its creation, and legal frameworks such as the Dublin Regulation have been implemented to assure fairness and stability in the region. However, a closer analysis of the EU’s policies and regulations reveals a lack of congruence, fairness, and effectiveness. The arrival of a total of 1,255,600 asylum seekers to Europe by the end of 2015 (Eurostat, 2016) made these flaws even more visible and created tension among Members. Although this number decreased exponentially in 2016, with an estimate of 370,000 arrivals (Batha, 2016), the number of asylum seekers was still of great concern for the EU.

For liberals, the European Union (EU) is a success and a proof that cooperation among states and non-state actors can bring peace to a region (Russett, 2013). However, since its creation in the 1950s, the EU has developed into more than just a framework for cooperation, it is the attempt of regional integration. Although there are other attempts of regional integration/organization in the international system – among them Mercosur in Latin America, Gulf Cooperation Council, African Union, and Association of South East Asian Nations – none has been able to successfully implement a model of political and economic cooperation as the EU (Cameron, 2010). The EU stands as a pioneer, and up to the present time, the EU is “a highly successful attempt at integration” (Staab, 2013). However, events like the economic crisis from 2008-2012 and the current lack of functional policies and consensus among Member States on asylum and migration issues have been threatening the Union, together with its significance and authority. The threat has materialized on consequences like Brexit in 2016, which many believed could not happen but it did. There has also been an increase in popularity
of right political parties in different Member States (e.g. AfD in Germany and FPÖ in Austria), which promise less cooperation with the EU and more nationalistic measures, and as a result endanger regional integration.

Although successful, EU’s framework for cooperation is complex. Each Member has its own political system, economic strengths, national interests, etc. Therefore, to facilitate the decision-making process of the Union, different sectors (e.g. agriculture, transport, foreign affairs, migration) are grouped under an umbrella of mechanisms. Because this thesis seeks to analyze the European Union’s reactions towards the migration crisis, with more emphasis on the case of asylum seekers, the focus is on EU’s asylum policy-making process. To do this, it is important to have an understanding of the policies and regulations in place as agreed on relevant Treaties, and the measures taken as a response to the crisis. These responses are based on the proposals drawn by the European Commission. Furthermore, the migration crisis Europe is facing at the moment started in 2014, but the biggest peak of arrival occurred in 2015 when over a million of mixed migration groups arrived to the shores of the region. As mentioned before, in 2016 the numbers reduced exponentially but the tensions among MS remained high. Thus, for the purpose of this thesis, “current migration crisis” refers to the inflow of asylum seekers to the EU from 2015 until the end of 2016.

The topic of migration and asylum has been important for the EU since its creation due to the Union’s fundamental policy on open internal borders. It is a topic of great concern for all its Member States, and one that goes under continuous changes and improvements at the Union level. In fact, six years ago, in 2011, the Arab Spring raised concerns to many inside and outside the MENA region, and the EU was expecting the arrival of a large number of migrants as a consequence of this socio-political turmoil. Therefore, the EU once again organized itself
quickly to manage these arrivals; it increased border control to reduce/prevent inflows of migrants, and also made agreements with countries of origin. However, despite much anticipation, the number of arrivals was much lower than expected in the immediate aftermath of the Arab Spring (Awad, 2013). It was not until Syria fully faced the outrageous consequences of its prolonged civil war that the EU’s asylum and migration policies were put to a test, which, so far, they have mostly failed, as a closer analysis of the EU’s security policies and regulations concerning asylum reveals their lack of congruence, fairness, and effectiveness.

There is a lot of research done about EU’s economic and political ties; however, research about its migration policies and issues is more limited. And yet, especially because the migration crisis studied in this thesis is recent and still relevant in the region, this study has a significant value for political and migration research in general. For example, political parties are constantly referring to the crisis and migration issues in their speeches. Moreover, the EU was created out of the idea of building peace in the region through economic cooperation, and since then, the EU has always given more priority to economic and trading issues than to other topics, such as is the case of migration although it is a matter of concern for all Members. Additionally, to understand the current situation in the EU, it is important to also understand the root causes of the migration inflows. Certainly, the Syrian war has been a big factor, but it is not the only push factor for the wave of migration that the region is facing. As it will be explained in the course of the thesis, none of the root causes in the countries of origin and transit have been solved so far; as a result, without a clear view of when the flow of migrants will decrease, the EU desperately needs to establish better asylum policies instead of just fortifying its external borders.
Due to its relevance—not only to the region, but as an example for the global and international political system—it is important to understand the EU’s response to the crisis. The tensions and disagreements between Member States that arise from the lack of functional solutions and the continuous arrivals of migrants through irregular channels, can affect the existence of the EU. One of the biggest challenges the Union is facing, is agreeing on security policies that would provide functional solutions to deal with inflows of asylum seekers that are already in its territory. If the EU continues to implement measures that only alleviate the tensions for a period (Collett, 2015), but do not fix the unbalance migration issues in the region, these tensions will not cease, or will eventually repeat. To resolve the problem sustainable solutions must be implemented to assure security once again to Member States and its citizens.

As stated before, the EU has not been able to establish sustainable security policies that provide solutions to the migration crisis since 2015; instead, its actions have caused tensions among Member States and fortified EU’s external borders. The thesis aims to answer two research questions:

1. Why the European Union has not been able to agree on a common asylum policy?
2. Despite failing to agree on a common asylum policy, are there any areas of merging consensus? If so, what are they and why?

There are important key words in the first question that emphasizes the scope of the thesis. First, rather than analyzing individual Member States, this thesis studies the EU as a supranational union, which has its own institutions and decision-making processes. Consequently, the policies, regulations, and systems to be analyzed are those made by the EU, which are based on specific policy-making processes. It is in these processes, that the word “agree” plays an important role, considering that decisions are taken in collaboration with different bodies and Members. For example, if the Council and the European Parliament reject
a proposal from the European Commission (EC), this proposal cannot be adopted because there was no agreement between the relevant institutions. “Able to”, refers to the capability of the actors involved in the policy-making process to succeed or lack approval/agreement. The second research question aims to investigate if there is any area or areas of consensus between the EU and MSs. As a result, it is possible to find what measures have been successfully implemented based on the merge of interests between the EU and its Members, and most importantly why they succeeded. Furthermore, the term “tensions” will be used throughout this thesis to refer to the lack of consensus and agreement that exists among Member States on how to react to the migration crisis. Although there are systems and regulations in place and the EC has implemented legislative packages to solve the problems caused in the region by the crisis, not all of these proposals were accepted by all of the Members. As it will be discussed in Chapter 3 and 4, this lack of acceptance has caused tensions. Similarly, another important term for this thesis is “sustainable solutions”, which are measures that tackle the existent problem rather than transferring the responsibility to another actor and can persist for years. As previously mentioned, the solutions that have been established by the EU have in some cases alleviated tensions, but they have not been able to provide sustainable and functional solutions to the issue (Collett, 2015). Lastly, security is a crucial topic (if not the most important one) for Member States; hence, some policies derived directly from this concern, meaning that the impact of migration on security will be looked at to some extent.

Considering that there is still around 131,000 asylum seekers stranded in Greece and Italy from the 160,000 that were proposed by the EC for relocation (Harris, 2017), the first question seeks to find the reasons for why the EU has not adopted a regulation/measure that can fairly share the burden of asylum seekers among Member States. At the moment, Greece and Italy have the biggest responsibility considering that they are the bordering states, which is why this
question helps to investigate further EU’s legal framework and mechanisms in order to understand what is preventing the Union to agree on a common asylum policy. Related to this idea, the second question asks why solutions that can help solve the situation have not been adopted. The EU has been able to adopt measures that can block the inflow of asylum seekers, so then why has it failed to adopt solutions that tackle the problem rather than externalizing it. These two research questions are then important to have a better comprehension of how the EU is reacting to the migration crisis, what proposals have been adopted, why sustainable solutions are difficult to implement, and what proposals cause tensions in the region.

In its report *The Mediterranean Migration Crisis: Why People Flee, What the EU Should Do* (2015a), Human Rights Watch stated that “while the international community as a whole has a role to play in addressing global migration challenges, the EU as the destination region has a primary responsibility for ensuring that its migration and policies … are fully in line both with international law and with the EU’s own regional law” (para. 9). The EU is a primary actor in the migration crisis; therefore, understanding its actions is important both for academia and for the international system.

To achieve the purpose of this thesis, the research is divided in five chapters and a conclusion. The first chapter explains what is the European Union, where are the irregular migrants and asylum seekers mostly coming from, defines important terms for the understanding of the topic, and explains why asylum seekers might be portrayed as a security threat for the region. The second chapter describes the evolution of EU’s policies on migration and asylum, and describes what are the mechanisms in place to react to these arrivals. Third chapter describes the methodology for selecting the analyzed EC proposals, and the fourth chapter is the description and results from these proposals. Chapter five provides an analysis of the results and provides
answers to the research questions. Lastly, the conclusion offers a description of the main findings, overall remarks of the thesis, limitations, and future research ideas base on the findings of this study.
Chapter 1: Defining terms and providing background information

1.1 The European Union

The European Union is a politico-economic union among 28 state members from the European continent. It was born out of the impact from the Second World War, where countries of the region had to build again their economies and, above everything, create peace and stability (Staab, The European Union explained: institutions, actors, global impact, 2013). Therefore, in 1951 the first attempt to form a Community was created based on the coal and steel production. France, Germany and Italy together with the Benelux countries (Belgium, Netherlands, and Luxembourg) signed the European Coal and Steel Community (ECSC) Treaty. The production of coal and steel was the main resource for the economy of both Germany and France, which is why they decided to create a cooperative framework that would reduce economic tensions and would build a community in which the production of these goods could be increased. The aim of the ECSC was to create a system for the “free movement of coal and steel and free access to sources of production” (Publications Office of the EU legislation, 2010, para. 1). The Treaty consisted of not only an economic alliance, but also political with a common High Authority that monitored “the market, respect for competition rules and price transparency” (Publications Office of the EU legislation, 2010, para. 1). Such an agreement between the six countries would promote cooperation and consequently bring about peace. In 1957, under the Treaty of Rome, the six countries signed an agreement in which the creation of a common market was one of the main components of the Treaty; this event gave way to the European Economic Community (EEC). The purpose of the common market was to expand economic cooperation and promote the free movement of people, goods (beyond coal and
steel), and services (European Union, 2017a). Twelve years later, by 1969, the political changes of the era gave way to a summit that would integrate even more European states, through the summit of The Hague. This summit consisted on three major issues concerning regional integration: deepening, widening, and completing. More importantly, the summit opened the way for supranational order in the region.

It took many treaties and summits for the European Union to evolve and be the entity that it is nowadays—and it is still evolving and changing. But, as of today, the EU “is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU countries. The treaties are negotiated and agreed by all the EU Member States and then ratified by their parliaments or by referendum” (Directorate-General for Communication (European Commission), 2015, p. 3). But what specifically makes the EU comparable to a state government? In 1992, the Treaty on the European Union (TEU) resulted as a milestone for the union because of the changes it produced on unifying even more its members. So, not only this treaty changed the name from “European Economic Community” to “European Union”, but it also brought closer the relationships among its members. First, it was the first time that there was a discussion about citizenship values and, in fact, it gave EU citizens uniform rights. Second, the legislative power of the European Parliament (EP) was increased. Third, the implementation of an ombudsman, whose duty is to report maladministration in the administrative decisions as addressed by citizens. Fourth, the creation of the Committee of Regions allowed the legislative process to have a regional voice. Fifth, establishment of three pillars to divide and increase the enforcement of different policies. Each pillar is specialized on specific matters: Pillar I deals with economic treaties and the single market; Pillar II deals with the unification of international diplomacy and common defense policies; and Pillar III deals with cooperation on Justice and Home Affairs (JHA), which encompasses issues on immigration, asylum, internal security, etc (Staab,
The European Union explained: institutions, actors, global impact, 2013). These pillars remained important for a long time, however, they have changed over time and some of the important changes will be mentioned under the Treaty of Lisbon section.

According to the Center of Information on European Institutions (CIIE, n.d.), there are seven institutions that compose the EU, with each one of them having their own structure, function and members. These institutions and functions are:

- The European Council: is the body that outlines “the general political direction and priorities of the EU” (European Commission, 2014, p. 5). Its members are the Heads of State from all MS, the President of the European Commission, and the High Representative for the Common Foreign Affairs and Security Policy. The president of the European Council is elected with a qualified majority voting by its members, (s)he holds a term of two and a half years, and his/her main role is to organize and lead the meetings of the Council. Additionally, the President is also responsible for representing the Council abroad on their Foreign and Security Policy (CIIE, n.d.).

- The Council of the European Union: also known as “the Council”, it is the main legislative and decision-maker body of the EU. Together with the European Parliament, the Council creates European laws and budgets. The laws are based on the suggestions offered by the European Commission (CIIE, n.d.). It is composed by the Government ministers from each MS –thus, in total 28 ministers. The meetings are arranged according to topics/areas (e.g. agriculture, transport) and, so, the ministers that participate represent this area. Each EU country holds the presidency due to its six-months rotation mechanism.

- The European Commission: its role is to “promote the general interest of the EU by proposing and enforcing legislation as well as by implementing policies and the EU budget” (European Union, 2017b). The EC is the main administrative body of the EU
and it has a crucial role in making and executing European politics (CIIE, n.d.). It also monitors the right implementation of treaties and executes EU’s common budget. There are 28 members (one for each MS), known as Commissioners, and they have a term of five years. The President of the EC is suggested by the national representatives from the European Council, from which the European Parliament then holds elections to elect or not the nominated candidate (European Union, 2017c). Like its members, the President has a term of five years.

- The European Parliament: elected directly by EU citizens every five years, the European Parliament has legislative, supervisory, and budgetary functions. As mentioned before, the European Parliament together with the Council passes European laws, it also determines international agreements and enlargements of the Union. Among other functions, this body also examines and acts upon citizens’ requests, discusses “monetary policy with the European Central Bank” (European Union, 2017d), evaluates the EC and the Council, etc. The European Parliament is made out of 751 Members of European Parliament (MEPs), who proportionally represent the population of the MS, and they elect the President of the Parliament, who has a two-and-a-half-year period (and may be re-elected).

- The Court of Justice of the European Union (CJEU): it is the body that monitors the interpretation and implementation of EU law, and it ensures that all MS and EU institutions comply the law. The CJEU is composed of 28 judges (one from every MS) and nine advocates-general, all appointed by MS for a six-year period (CIIE, n.d.).

- The Court of Auditors (ECA): monitors EU’s funds/budget, in order to ensure that they are collected and expended appropriately. The institution also helps the EU to achieve proper financial management (CIIE, n.d.). It has 28 members (one from every MS), who are elected for a six-year term by the Council and consulting with the Parliament.
The European Central Bank (ECB): its main role is to keep prices stable in the Union, but it also manages the euro, and manages economic and monetary policy from the EU. It is composed by its President, Vice-President and “governors of national central banks from all EU countries” (European Union, 2017e).

The institutions create an economic-politico system capable of making policies, adopting legislations, and establishing order for the region (or at least attempt). However, as observed in European institutions, Member States hold a great influence in all the processes because they have representatives in every institution, this may cause issues if their national interests play a conflicting role. Nonetheless, the efforts of the EU to create a cohesive governmental body should not be underestimated, making it possible then to analyze EU’s supranational bodies and their policies as a political actor, instead of having to look at its individual Member States. The EU is a complex supranational union, thus, understanding how regulations, policies and power works in it, is a difficult task because depending on the matter at hand (e.g. economic, foreign affairs, security issues) the policy-making process varies and so does the strength of its actors – it is “polycentric” (Cini, 2011). Considering that the focus of this thesis is on immigration and asylum policies – with more emphasis on asylum – only the policy-making process of that area is going to be analyzed.

According to the Council of the European Union, after the Treaty of Lisbon policies on immigration and asylum “must be ‘governed by the principle of solidarity and fair sharing of responsibility’” (as cited in Basilien-Gainche, 2012, p. 355). However, problems arise due to the lack of clarifications on what exactly means “solidarity” and “responsibility”, and how are MS expected to behave accordingly.

Asylum and immigration issues were at the top of the agenda when developing the Treaty of Lisbon. There were two main objectives: to create an Area of Freedom, Security, and Justice (AFSJ), and to create a European immigration and asylum policy (Sy, 2017). As a result, the
powers of the European Parliament and the Court of Justice increased (Basilien-Gainche, 2012; Kostakopoulou, 2012). In this way, the AFSJ and the immigration and asylum policy-making process would follow the same mechanism as the rest of EU’s internal policies. Other key changes relate to the European Commission. First, the EC’s right to set forward initiatives on asylum and immigration policies was reinforced (Kostakopoulou, 2012). And second, it has now the power to start infringement procedures against MS who are not obeying the implementation of asylum and immigration measures (Basilien-Gainche, 2012). However, if one-quarter of MS agree on a proposal, they have the right to bring this to the Parliament. Additionally, in certain cases the Council alone can adopt legislative acts. The European Parliament may adopt legislative acts alone as well, but this happens only in rare cases. One of the special cases in which the Council may adopt legislative acts alone is on justice and home affairs matters. Although the overall process may sound complicated, all the changes together should provide an easier and better process. The main reason is because the policy-making process is now characterized by a Qualified Majority Voting system. The result is the elimination of national vetoes and co-decision between the Council and the EP as a rule (European Commission, 2009). Regardless of their stances, it is also important to remark that, both the EU and its MS still prefer and promote policies that impede the arrival and/or that facilitate the removal of migrants.

All these changes might prove beneficial for the European integration project that the Union has been encouraging since the early 1950s. However, according to the Lisbon Treaty national security issues of MS still hold a greater priority (Basilien-Gainche, 2012; Kostakopoulou, 2012). Member States can withdraw proposals as long as this is supported by cogent evidence and arguments. Meaning that, national interest and sovereignty will always play a role in the policy-making process for the EU. Thus, supranational powers would be once again reduced by intergovernmental mechanisms. Additionally, although all MS have “similar characteristics
and status *vis á vis* the EU” (Murray, 2012, p. 3), some Members fall under special classifications and enjoy different treatment according to the EU treaties. This issue further complicates the implementation of policies on immigration and asylum.

1.2 Refugees flows to Europe

In order to discuss the refugee crisis from 2015-2016, there has to be a basis of understanding of the causes behind it and the countries of origin. It is important to state that, refugees not necessarily make it to their final destination in one journey, that is, they might travel through other countries before they reach their desire destination. So, their country of origin is the one from which they started their journey and where they had an established life; it is not the last country from which they departed before reaching their final destination (unless they traveled directly from point A to point B). Furthermore, all refugee flows have an explanation, and although in the crisis that will be analyzed in this thesis the Syrian civil war is a major factor (as it will be explained below), it is certainly not the only conflict that prompted people to embark on journeys – many times dangerous, to find safer grounds. According to the UN, besides Syria, the war in Iraq and the armed conflicts in Afghanistan and Eritrea were also reasons for the inflow of refugees (as cited in Tomkiw, 2015). Given that refugee camps in neighboring countries, Turkey and Lebanon, are running above their capacity and with poor/limited access to basic needs, some refugees are then forced to continue moving forward to Europe (Awad, 2016a). Geographical proximity together with economic stability is another aspect for refugees to continue their route to the EU (Tomkiw, 2015; Human Rights Watch, 2015a). Thus, understanding the root cause of the refugee flow is important when analyzing the issue at hand. Therefore, this section aims to briefly describe the issues/conflicts that countries of origin were going through between 2015 and 2016.
According to Eurostat (as cited in BBC News, 2016), the top ten countries of origin in 2015 were: Syria, Afghanistan, Iraq, Kosovo, Albania, Pakistan, Eritrea, Nigeria, Iran, and Ukraine (see Figure 1). The majority of these countries are not located geographically next to European countries, which means that not all refugees arrived in a direct journey. In fact, the majority of the irregular – i.e. not legal – arrivals to Europe were by sea, with Greece and Italy being the leading ports of entry, and Turkey and Libya the leading ports of departure (ESI, 2017). Therefore, it is important to not only comprehend countries of origin, but also the conflicts in the countries that encompass these routes and serve as major departure ports –countries of transit. For the purpose of this thesis, only the conflicts in Syria, Afghanistan, Iraq, Libya, and Turkey will be evaluated.

Figure 1 - Top 10 origins of people applying for asylum in the EU (BBC News, 2016)

Syria
In December 2010, Tunisians took the streets demanding for a change of government. By 2011 this act sparked the widely-known movement, the so called Arab Uprisings. This movement
that consisted of protests, riots, demands for change of government, and—in some cases—coups, had different impacts for those states in which it took place. Until this day, Syria is still suffering the damage left behind by the Arab Spring. What started as peaceful demonstrations against the Syrian government quickly turned into a bloody civil war. The war ignited when the protests were cracked down violently by the government. As a consequence of this, rebels/opposition armed groups took the street to confront the loyal forces to President Bashar al-Assad; hence, giving way to an armed conflict. Throughout the course of five years, the conflict became more complex as other actors got involved. First, Kurdish ethnic minority joined the armed conflict and started to claim a ministate for themselves. Second, the chaos and violence gave way for ISIS to also get involved in the Syrian war. Third, rebels and loyal forces have been receiving support from different foreign powers. Among them are Iran and Russia supporting Assad, while the US and Saudi Arabia support the rebels (Fisher, 2016). Civilian areas are indiscriminately being fired and bombed by the different actors, destroying not only entire communities but also killing thousands of innocent civilians (Human Rights Watch, 2015a).

Since the war started in 2011, 400,000 people have been killed as a consequence of the war (Fisher, 2016). The number of refugees entering Europe as a result of the conflict has been labeled the second most significant refugee flow in history, with the post-World War II period being the first. In fact, the UNHCR stated last year in June that “the number of displaced people [globally] is at its highest ever” (McKirdy, 2016); from which the Syrian war produced the largest refugee population out of the total sum. Around 7.6 million people were internally displaced in Syria by the end of 2015 (Grimley, 2015) and an estimate of 4.9 million have been externally displaced (McKirdy, 2016). The majority of them have searched asylum in bordering and neighboring countries. Providing humanitarian aid to all these people is a challenge due to government forces and non-state armed groups restrictions (Human Rights Watch, 2015a). As
stated by the UN High Commissioner for Refugees, António Guterres, “This is the biggest refugee population from a single conflict in a generation” (Clayton, 2015).

Among the devastations caused by the war, there is also the damage in children’s education. In 2014 3,000 schools were destroyed as a consequence of the conflict, leaving behind “half of the school-age population” out of school (Human Rights Watch, 2015a).

Nonetheless, when looking only at the number of asylum seekers arriving in the EU, the Syrians also make the vast majority. According to Eurostat (2017a), in 2015 more than 350,000 Syrian asylum seekers entered the region. In 2016 the number decreased but only marginally, with the numbers being close to the 350,000. In both years, Syria was the country of origin with highest number of nationals entering the Union. In a research conducted by Human Rights Watch (2015a), interviewed refugees residing in EU countries expressed “the paramount need [that exists] to escape the violence and hardship of war”.

**Afghanistan**

When discussing Afghanistan and its causing conflicts of causalities, displacement, and refugees, the first factor that might come into mind is the Taliban. The Taliban was formed in the early 90’s and it was the result of an Islamic group which resisted the Soviet occupation between 1979-1989. Soon after its formation, the Taliban starting gaining popularity and support “by promising stability and rule of law” (Laub, 2014). By 1996 the group had seized control of the capital, Kabul, and they ruled the country until 2001 when the regime was overthrown by the U.S.-led invasion.

Since then waves of unrest and conflicts between government forces and the Taliban have taken their toll. In 2015, the fight escalated once again and the Taliban took control of different cities (e.g. Kunduz). The fight persisted in 2016 and with the threat of controlling key areas the US forces also intervened in the conflict. The airstrikes carried by the US were as numerous as
those conducted after the events of 11 September 2011 (Human Rights Watch, 2017a). Thus, corroborating to the deaths of innocent civilians. But in both years the casualties were mostly caused by IEDs, suicide attacks, mortars, and rockets, used by the Taliban and governmental forces (many times illegal militia forces). Civilian populated areas and schools were the battlefields, leaving children without access to education and thousands of civilians on the move. The number of internally displaced people (IDP) in Afghanistan increased to one of its highest records in 2015 (Human Rights Watch, 2016b) and the total in the country amounted for more than 1.3 million in 2016 (Human Rights Watch, 2017a).

Humanitarian organizations in charge of settlements for IDP were not prepared for the large number. Meaning that many civilians had to settle in places where there was limited access to basic needs such as “safe water, sanitation, health care, and education” (Human Rights Watch, 2017a). In addition to the mentioned struggles, children and women were more vulnerable to violent abuses. During these two years, the Taliban and government forces increased their recruitment of child soldiers, thus, making children more susceptible. The Taliban also used these children as suicide bombers, sex slaves, and explosive manufacturers (Human Rights Watch, 2015a). Specially women and girls have been affected in the Taliban dominated areas. Due to fear and Taliban norms, they have constraining freedom of movement, access to education, and/or work (Human Rights Watch, 2015a). Prosecutions against women for “moral-crimes” continued to take place, causing them to be unfairly imprisoned and the number of cases for domestic violence against them stayed steady –with over 2,700 cases per year (Human Rights Watch, 2016b).

Towards the end of 2016, the number of IDPs and refugees was so substantial that the UNHCR implemented an “emergency appeal for Afghanistan to provide humanitarian assistance” (Human Rights Watch, 2017a). But donors such as the EU, were also busy dealing with their
own refugee crisis, which included many Afghan civilians (Human Rights Watch, 2016b). The crisis not only consisted of Afghan civilians, but also many refugees from Pakistan. Having discussed previously the Syrian civil war, it is possible to imagine that humanitarian aid in Afghanistan was not as high/efficient due to other pressing conflicts in the region. This, together with the insecurity and violence in the country, forced Afghan refugees to move to Iran. However, due to the poor/lack of livelihood in the refugee camps and their inability to take in more people, some Afghan refugees continued on the search for safer grounds by taking dangerous journeys to Europe (Human Rights Watch, 2016b).

Iraq

Similar to the Syrian war, Iraq’s armed conflict is also constituted by many different actors, them being: ISIS, Iraqi governmental forces, Kurdish forces, pro-government militia groups, and an international air campaigned that was led by the US (Human Rights Watch, 2016c). The fight against ISIS intensified in 2016 with the radical group increasingly executing civilians and using them as shields. One of the highest peaks of people displaced in the country was reached in 2015 with around 3.2 million IDP (iDMC, 2017). This occurred even though ISIS, the government, militias, and Kurdish groups were making it difficult for them to leave the affected areas and find safe refuge. Taking advantage of the chaos, pro-government militia groups were demolishing the homes and shops in Sunni areas that were recaptured by the central government. Government forces were also violating human rights and international law by executing “summary executions, beatings of men in custody, enforced disappearances, and mutilation of corpses” (Human Rights Watch, 2017b).

Around 3 million children were deprived from education, medical care, food and safe water. Similarly to the case of the Taliban in Afghanistan, ISIS was recruiting/kidnapping children to
train them into soldiers, and also to use them for suicide missions and executions (Human Rights Watch, 2016c). Women were also particularly vulnerable, as ISIS militants sexually enslaved and abused many of them. In fact, “Human Rights Watch documented a system of organized rape and sexual assault, sexual slavery, and forced marriage by ISIS forces” (Human Rights Watch, 2016c). Specially Yezidi women were the most vulnerable, and were forced into marriage with ISIS fighters, if they refused they would be imprisoned or killed. Although ISIS was responsible for these acts, the government did not take measures to prevent or impede the unfair arrest of these women. In fact, according to the UN, Iraqi law does not provide protection of women should they be victims of domestic violence – one in every 5 women are victims of domestic violence (as cited in Human Rights Watch, 2017b). In ISIS dominated areas, women were also deprived from health care and education. The case of the Yezidi people in Iraq is severe and although finding data on the actual numbers of casualties is a challenge, an investigation made between 2014 and 2015 showed an estimate of the horrifying numbers. According to Cetorelli, Sasson, Shabila, and Burnham (2017), around 9,900 Yezidi people were killed or kidnapped in August 2014, which amounts for around 2.5 percent of the total Yezidi population that lived in the attacked area of Mount Sinjar. The fatalities against Yezidi people continue to be a pressing issue and in June 2016, the UN Human Rights Council condemned the attacks by ISIS as “genocide” (UN News Centre, 2016).

Libya

As in the case of Syria, one of the results from the Arab Spring in Libya was state instability. According to Abdessadok (2017), “briefly after the revolution, Libya experienced a period of calm before it was plunged yet again into another conflict”. There are two governments competing for power and legitimacy, one of them recognized by the international community and the other self-declared. The chaos allowed armed groups to torture, abduct, kill and detain
indiscriminately civilians. The rivalry and lack of central government authority has left the country submerged in violent conflicts, lawless, communities lacking basic services, children without access to education, and with around 435,000 IDP (Human Rights Watch, 2015a; Human Rights Watch, 2017c; Amnesty, 2017).

Libya used to be the final destination for many migrants (Nielsen, 2017). However, after the country entered a new period of sustained domestic violence in 2014, many started fleeing again to find safer grounds (Svoboda, 2016). Many have taken advantage of Libya’s proximity to Italy and have used the country as a transit for years, but the recent instability has made those numbers swell. Therefore, country is an important transit and destination (Amnesty, 2017). The lawless state of the country, has encouraged migrants to deal with criminal webs of smugglers in order to move on to Europe. In 2015, there was more than 143,500 arrivals by sea to Italy (Human Rights Watch, 2016d) and 342,774 in 2016 (Human Rights Watch, 2017c); the majority of the arrivals in both years were from Libya. However, the maritime journey is dangerous and has cost the life of over 3,100 people in 2015 (Human Rights Watch, 2016d), and over 4,518 in 2016 (Human Rights Watch, 2017c). Asylum seekers and migrants continue to take this treacherous option because of the abuses they are living in Libya.

In a report about the Mediterranean migration crisis, Human Rights Watch (2015a) found that migrant detention centers of the Department for Combating Irregular Migration (DCIM) are overcrowded, with insufficient food, and have terrible sanitary conditions. Additionally, detainees are routinely tortured, sexually abused, enslaved, and lack access to medical care (Human Rights Watch, 2015a; Human Rights Watch, 2017c; Amnesty, 2017). Such abuses were also being executed by smugglers and IS (IOM, 2016). The horrors asylum seekers and migrants faced between 2015-2016 and are still taking place, can be described as follows:
“The costs of the journey — both human and monetary — match a steep sum of desperation and demand. But what's most shocking about the factors driving families from their homes is that no two countries are the same.

The journey will drag them through several layers of hell before their toes even touch the sea.” (Sakuma, Damned for Trying, 2016)

Turkey

As stated by the UNHCR (2016a), Turkey is the country with the largest number of refugees, with an estimated total of 2.8 million refugees in 2016. Most of these refugees come from Syria due to its neighboring position with the conflicted country. Although Turkey put in place back in 2011 an emergency response system to deal with the arrival of refugees, the large numbers have made it difficult for the country to cope appropriately with the situation (İçduygu, 2015). To ensure protection and assistance to the incomers, 22 refugee camps were placed by the Disaster and Emergency Management Agency (AFAD), but in 2015 only around 300,000 of the refugees lived in the camps (3RP, n.d.). That means that, in 2015 approximately 2.2 million refugees lived in urban areas among the country’s communities. There are three main reasons for refugees to opt living outside camps: 1) camps have exceeded their capacities; 2) family relations and financial independence; 3) and asylum seekers who enter the country illegally cannot register in the camps (İçduygu, 2015). Even though the design of the camps is poor to cope with the climate, the living standards in them are better than what refugees face in urban areas. Additionally, in camps refugees have access to basic needs such as health and education, while outside they live in damaged and/or over-crowded houses (3RP, n.d.). Due to lack of work permit or legal status in the country, urban refugees have to either work in the informal sector or work in poor conditions with low salaries (İçduygu, 2015). Turkey has focused mainly
on maintaining the refugee camps, but little has been done to deal with the needs (e.g. working permits) of those living outside.

Refugees in Turkey are struggling, however, compared to the abuses refugees go through in other countries, like the case of Libya, they have a better life in this country. So, what has been the cause for thousands of refugees to flee Turkey to Europe? Besides the points mentioned before, there is one important reason and that is that Syrians do not see the war in their country near the end anymore, which means they must establish and continue with their lives elsewhere. Europe is near and the economic opportunities of the region are a great reason for the refugees to continue their journey (Frelick, 2015a).

1.3 Defining terms

So far, the terms refugee, asylum seekers, and migrants have been mentioned multiple times. These terms are more often than not misused in news and everyday conversations. Defining them is not only crucial for this thesis, but also for the general discussion that exists nowadays on migration, refugees, and asylum.

Who is a refugee?

One of the worst events in history respecting refugees, was World War II. Because of this reason, in 1951 the United Nations approved the Convention Relating to the Status of Refugees. The Convention is crucial when discussing issues on refugees, because it defines “who is a refugee, their rights, and the legal obligations of states” (Awad, 2016b). Thus, according to the convention, a refugee is:

“[a person who] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is
outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail himself[herself] of the protection of that country” (UNHCR, 2010, p. 14).

However, when the Convention was created, it was only applicable to events that occurred in Europe before 1951. For this reason, in 1967 a Protocol was created to supplement the Convention, with the objective of removing geographical and temporal limitations (“Protocol relating”, 1967). All 28 EU members ratified both the Convention and the Protocol. However, states have the freedom to decide whether to abstain or not from geographical and temporal restrictions (UNHCR, 2015). Another crucial element of the convention, is that states must provide protection of non-refoulement. This means that EU MS are obliged to not return refugees back to countries where they fear they are being or will be persecuted (Katz, 2017). “States [also have the obligation] to provide certain facilities to refugees, including administrative assistance […]; identity papers […], and travel documents […]; the grant of permission to transfer assets […] and the facilitation of naturalization” (Goodwin-Gill, 2008, p. 5). The list of obligations and agreements that are addressed in the document goes on, however, these points are the most important –or at least for the present research.

The UNHCR is the body that “guards” the 1951 Convention and its 1967 Protocol. Hence, states that ratified these documents, are expected to cooperate with the UNHCR in order to assure that “the rights of refugees are respected and protected” (UNHCR, 2016b, para. 3).

Among States, the UNHCR, (other) international organizations, non-governmental organizations, etc., the Convention still remains one of the most important agreements for dealing, protecting and finding solutions for refugees. But, it omits “the question of admission, and neither does it oblige a state of refuge to accord asylum as such, or provide for the sharing of responsibilities” (Goodwin-Gill, 2008, p. 8). Therefore, understanding how the EU regulations and policies deal with the arrival of refugees is also important. However, these
matters at hand—although crucial—that the Convention omits, are not effectively solved either by the EU for its Members, which consequently contributes to the tension between members.

Definitions according to the European Union

In its dossier about Migration and Asylum, the European Parliament provides clear definitions to the terms according to what the EU has agreed over the years and in accordance to regional and international agreements.

**Refugee:** The EU follows the definition established by the 1951 Convention (explained above). However, it adds that a refugee is “a person who has been recognized as being in need of international protection” (European Parliamentary Research Service, n.d.). It is very important to point out the word “recognized”. How is a person recognized in need of international protection when thousands of people are arriving in the shores and doors of the EU? A person is not only recognized of being in need of protection just because of its nationality or its country of departure; otherwise, all people in need arriving from war-torn states (e.g. Syria and Iraq) would immediately be classified as refugees. Member States are in charge of evaluating applications and deciding whether or not refugee status will be granted. They have their own systems, interpretations of the official definition of refugee established by the 1951 Convention, and their sovereignty grants them control over migration. Therefore, in attempt to tackle this issue, the EU created the Common European Asylum System (CEAS), which aims to set laws to ensure equal and fair opportunities of application procedures, recognition, and protection (Katz, 2017). Nonetheless, all refugee applications are embedded in a process that includes many steps and procedures that could take even years to be finalized.

**Asylum-seeker:** “is a person requesting international protection due to the risk of persecution in his or her home country. To qualify as a refugee, an asylum-seeker needs to present evidence for evaluation” (European Parliamentary Research Service, n.d.). When looking at this
definition, perhaps it is possible then to correct what has been called a “refugee crisis” and label it as an “asylum-seekers crisis”. All refugees were initially asylum-seekers, but not all asylum-seekers will be refugees.

**Migrants:** people who decide to move to another country. According to the European Parliament Research Service dossier (Orav, Poptcheva, D’Alfonso, & Brus, 2016), under the definition of migrants, “people migrating to the EU are categorized as either: an asylum-seeker, a refugee, a beneficiary of subsidiary protection, an irregular immigrant or a legal migrant”.

**Irregular immigrant:** “a person from a third-country (non-EU country) who does not fulfill, or no longer fulfills, the conditions of entry as set out in the Schengen Borders Code or other conditions for entry, stay or residence in a Member State” (European Parliamentary Research Service, n.d.). This means that all the people that have been arriving by boats to the coasts of countries like Italy and Greece, can be classified as irregular immigrants. Nonetheless, among these arrivals, there will be people that fall under the criteria of asylum-seekers. Thus, the entry to the region through irregular/illegal methods consists of a mixed inflow of irregular immigrants and asylum seekers.

**Economic migrant:** this term has not been defined in the dossier. However, it is also an important term to define when analyzing the boom of migration and asylum-seekers between the years 2015-2016. An economic migrant is a person who moves out of his/her “country of origin purely for financial and/or economic reasons” (as cited in Amnesty, 2016). It is a relevant term because in light of the thousands of irregular arrivals to Europe, many migrants are taking advantage of the gate just for the sake of finding better financial and/or economic opportunities. Especially when looking at the flows of migration that crisscross Asia and Africa (see Figure 2) with Libya being the main transit country –for this type of migration, it is possible to assume that many of these people are indeed economic migrants.
1.4 Refugees as a Security Threat

The EU has seen itself trapped in the dichotomy of humanitarian aid and regional security. According to (Gibney, 2004), there are three reasons for which states perceive refugees as a threat: *reasons of volume, reasons of character, and reasons of anonymity*. Although Gibney relates these to the state, the reasons can also apply for the EU. *Reasons of character* refers to the perception that citizens have about the refugees. *Reasons of anonymity* relates to the incomplete information states might have on the new incomers (e.g. lack of information about their backgrounds and intentions). But most importantly for the scope of this thesis and for the current refugee crisis that has challenged the EU’s authority, is the *reasons of volume*, which is defined as follows:

The claim that refugees might be considered a threat by virtue of volume is generally of least concern to Western states. This reason is typically invoked in situations called ‘mass influx’, where tens or hundreds or thousands of
refugees attempt to cross into another state in a very short period of time. In such volume, refugees can destabilize the countries they enter. They might be a catalyst for ethnic conflict or anxiety over distribution of scarce resources. The results of such tensions can even spread into other neighboring states, provoking regional security concerns. Located, as they usually are, far from the sources of most refugee conflicts, Western states can normally insulate themselves from such large short-term movements of people. Moreover, it’s hard to see how threat of terrorism – the recent focus of Western concerns – makes the likelihood of such movements greater. (Gibney, 2004, p. 255).

Gibney’s work is worth to cite because the EU is in fact suffering many of the issues he emphasizes on the definition. First, the EU is facing a ‘mass influx’ with the arrival of 1,005,504 refugees by December 2015 (Kingsley, 2015a). A number that has been used by nationalist political parties across the region to gain support (Basilien-Gainche M. L., 2012). Second, the tensions caused by these arrivals have spread around the region and is the cause for lack of agreement among MS. But, unlike Gibney’s statement, the EU cannot insulate itself from these large arrivals because of its proximity to the countries of origin. The EU has definitely set policies to prevent or at least decrease the amount of arrivals, but it has not been enough to prevent the continuous number of arrivals.

Additionally, the freedom of movement that characterizes the EU (explanation follows in the next chapter) also makes MS perceive the arrivals as a security threat. Some MS might perceive that migrants can cross borders easier from some states. Which leads to another concerned, and that is terrorist attacks such as the 9/11 in New York and Washington DC, Madrid in 2004, and Paris in 2015 have raised the panic in the region increasing the pressure for the EU to
implement stronger security measures (Basilien-Gainche M. L., 2012). Economic pressure also incites MS to push forward policies to control migrants’ influx, rather than to provide aid. Security is a crucial topic (if not the most important) for MS, which is why some policies derive directly from this concern (this will be demonstrated later in the analysis of the EC proposals). As it will be observed in the course of this thesis, MS have the power to neglect regulations for the sake of their national security. By categorizing immigration as a matter of internal security, the EU together with its MS are ‘securitizing’ the issue. Coined by Ole Wæver and Barry Buzan (the so-called “Copenhagen School”), securitizing means to categorize an issue as a security threat, which consequently increases its importance for the security of the state and thus also the policies and actions towards the issue are affected (Buzan, Wæver, & de Wilde, 1998). When the EU and/or MS classify immigration as a “security” issue, this brings the matter directly to the top of their agenda(s). As a result, regulations are modified accordingly to protect the well-being of the community; in this case, also to protect the Union. Therefore, even though the focus of this thesis is to understand and evaluate EU’s reactions towards the refugee crisis, understanding the term and the securitization of immigration is relevant for the thesis.
Chapter 2: Evolution of the EU and the issue of migration and asylum

2.1 The Schengen Agreement

In 1985 France, Germany, Belgium, Luxembourg, and the Netherlands decided to create a territory with no internal borders checks, so that there would be free movement across the five states. This agreement took the name of “Schengen area” – after the city named Schengen, in Luxembourg, where the first meeting took place. The ‘Schengen acquis’ started as an exclusive agreement between the five Members, hence, it was an agreement outside the European legal structure (Malmersjo & Remáč, 2016). A single external border, which performs identical procedures in the immigration checks, was created in the Schengen area to replace internal borders checks. Consequently, the group had to also agree on common rules concerning visas, right of asylum, and external borders’ checks (Gelatt, 2005). These steps were necessary in order to allow free movement of citizens, but without impinging on internal laws and order. Similarly, cooperation and coordination between the different police and judicial bodies had to be developed in order to protect the internal security of the five members (Publications Office of the EU legislation, 2009; Malmersjo & Remáč, 2016). The agreement was later amended in 1990 – entering into force in 1995 – to officially remove the internal borders of the five parties and create a common external border, based on standard rules. Also in 1990, the Schengen Information System (SIS) was created, which is a ‘computerized database’ where security agencies from all Members can get access and share information about immigrants and asylum seekers who enter the region (Gelatt, 2005). Not long after, in 1992, the concept of “common European citizenship” was incorporated under the Treaty of Maastricht (Koikkalainen, 2011). To gain even more strength, in 1997 under the Treaty of Amsterdam (explained below in this
section), the ‘Schengen acquis’ was included in the EU legal framework (Gelatt, 2005; Malmersjo & Remáč, 2016). Fifteen years later, more states gradually started to sign the agreement and so enlarging the borderless area (Publications Office of the EU legislation, 2009), leading the way to a more sophisticated information system: SIS II in 2001 (Gelatt, 2005). The Schengen area has now expanded across 26 European countries, from which 22 are EU state members (European Commission, n.d.). In fact, free movement in the region is a fundamental right for all citizens of the EU (The Lisbon Treaty, 2008, Article 21). Citizens have the right to work, study, live and travel in any of the countries from the Union, as if they were in their own country (Gelatt, 2005; Malmersjo & Remáč, 2016). As of today, the EU guarantees internal borders without checks, due to its common policy on external border controls, asylum, and immigration, which is based on solidarity among its MS (The Lisbon Treaty, 2008, Article 67(2)). There are two mechanisms that support further this alliance: a) in 2011 the European Commission started publishing biannual reports, in order to maintain the area up-to-date accordingly; b) from 2015 onwards, every year five to seven Members are subject to evaluations and according to the results the Members implement changes together with the EU to strengthen their security and borders (Malmersjo & Remáč, 2016).

The main motivation for the creation of this Agreement was to create a borderless area for the free movement of goods and “the economically active population” – that is, for workers (Koikkalainen, 2011). Therefore, Schengen has not been concerned about the harmonization of immigration and asylum policies; the EU was responsible for this area (Gelatt, 2005). However, as it will be explained on the next section (Dublin Regulation), Schengen highly affected and influenced EU’s regulations and policies relating to migration and asylum (Chou, 2009). Furthermore, it is important to mention that, according to the Schengen Agreement, every Member has to abide to “international and EU law relating to the status of refugees” (Malmersjo & Remáč, 2016). Both, EU citizens and third country citizens, are expected to be
checked when entering the region. However, according to Schengen, third-country nationals can be subject to a more detailed check—should the MS (which is acting as the external border) find it necessary.

The Schengen agreement, thus, not only allows for the free movement of goods, citizens and capital, but also for the free movement of third-country nationals, which then becomes a concern for EU Members. Especially after the large arrivals of refugees and the Paris attacks in 2015, Member States started to raise more questions about the system (Katz, 2017; Malmersjo & Remáč, 2016). Under the Schengen legal provisions, asylum seekers have the right to apply and receive refugee status (should they meet the requirements) from one MS. But, at the same time, being inside the area might convey the wrong message to the refugee. The reason is because the person who is granted the refugee status does not have the same status in another MS, but rather in the granting State only (Katz, 2017). Thus, if a refugee moves freely in the Schengen area, he/she risks being deported for being illegal in a country. A refugee is legally allowed to move freely inside the area only after remaining in the granting MS for five years. Additionally, the majority of these refugees and asylum seekers have preferences about where they would like to establish themselves. Naturally some MS can offer more appealing opportunities for the newcomers, such as a more dynamic economy and better employment rates. But allowing this would then add more pressure to certain countries more than others—as it is the case with Germany (Katz, 2017).

These events have exposed the weaknesses of EU’s regulations regarding its external and internal borders (Malmersjo & Remáč, 2016). In fact, as a result of this, some Members started to “re-impose temporary border controls” (Peter, 2016, para. 15). According to the Schengen Borders Code (SBC), states are allowed to restore internal border controls for ten days in case of “public policy or national security”. This period can be extended for 20 days and for a maximum of two months, if the threat/problem persists. In the case that the state perceives the
threat as “foreseeable”, it is allowed to renew the time frame for 30 days and with a maximum of six months. Only in “exceptional circumstances”, the period can be extended for two years (as cited in Peter, 2016). Due to the uncertainty that EU members are facing respecting refugees, countries such as Austria, France, and Germany had at some point established temporary border controls. The European Parliament criticized this type of response from Member States (Malmersjo & Remáč, 2016). The EP was concerned that closing the borders would only prompt those in need of protection to use illegal webs of smugglers for reaching safer grounds in Europe. According to the EP, the establishment of open internal borders is one of the biggest achievements of the EU, and reinforcing external borders control is key to maintaining the agreement in place and also to the security of the region. Unfortunately, EU’s migration policy in general “is still often perceived as primarily focusing on the externalization of border controls, regrettably not accompanied by appropriate human rights guarantees” (Papagianni, 2013).

### 2.2 Dublin Regulation

As a result of the Schengen Convention, in 1990 the Dublin Convention was created, making it one of the first systems under intergovernmental cooperation (Morgades-Gil, 2015). The core principle of the Dublin system is to address which Member State from the EU should take responsibility for revising asylum applications and who should provide asylum. Therefore, “an analysis of the legal discipline of the treatment of the third-country nationals is bound to be based first and foremost on [the Dublin Regulation]” (Ammirati, 2015, para. 1). According to the regulation, the asylum seeker must apply in the first country of arrival and this state is responsible for providing asylum (UNHCR, n.d.).

On this first phase, the Dublin Convention determined which Member State would be responsible for examining asylum applications from arrivals in the EU territory. This was
important to define considering that the EU was expanding its Schengen area (explained in the previous section). Furthermore, the mechanism would prevent “asylum shopping”. This means that, by having a clear apparatus for processing asylum applications, asylum seekers could not travel freely around the EU territory in search for the “best” or more favorable state protection according to their interests (Morgades-Gil, 2015).

Since 1999 (under Tampere conclusions), the EU has the goal of creating a Common European Asylum System (CEAS). As part of this effort, in 2003 the Dublin system moved to its second phase, making it the Dublin Regulation (Dublin II) and falling fully under EU’s legal framework (Fratzke, 2015). As of today, the CEAS is encompassed by five mechanisms: “1. Asylum Procedures Directive; 2. Reception Conditions Directive; 3. Qualification Directive; 4. Dublin Regulation; 5. EURODAC Regulation” (Katz, 2017, pp. 313-314). Other important aspects were added to Dublin II, them being: a new regulation to improve cooperation between Members, together with an electronic mechanism to share secure data on the matter, called DublinNet; Regulation EURODAC was established, which is basically “a database for storing asylum seekers’ fingerprint data and their transmission between the Member States” (Morgades-Gil, 2015, p. 435).

The Dublin Regulation relies on the assumption that all member states have similar asylum laws and regulations which are in accordance with EU standards. This means that asylum seekers would receive similar treatment and protection across the union no matter which Member takes them in (UNHCR, n.d.). However, in reality this is not the case. In addition to this, the system also affects certain members more than others. Border countries (e.g. Greece, Italy, Spain) have a bigger responsibility because they will be the first country of arrival and, according to the regulation, this is the state responsible for the application and protection of the asylum seeker. So, if 1,000 asylum seekers arrive to Greece, then Greece is the responsible actor for reviewing their applications and providing protection. Consequently, most of the
responsibilities regarding asylum were transferred from Northern to Southern countries (Fratzke, 2015; Nicoletti, 2014; Peers, 2012). States that are in border regions of the EU territory are under a substantial amount of pressure as they receive far more asylum seekers than other Members. This has been specially the case with arrivals by sea, which according to the UNHCR over 362,753 asylum seekers arrived in 2016 (UNHCR, 2017), with Italy and Greece sharing almost equally more than 354,000 and around 8,162 in Spain (IOM, 2016b). Therefore, back in 2008 Member States asked for a revision of Dublin II, with the aim of improving its effectiveness, fairness and ensure the standards of protection for asylum seekers across the territory (Peers S., 2012). Systems such as the Visa Information System (VIS) and the European Asylum Support Office (EASO), were created shortly after in 2008 and 2011 respectively, to support MS in implementing correctly the Dublin regulation (Fratzke, 2015).

In 2013 the Dublin III Regulation came into effect and it contained several important changes. First, the system now includes applications for international protection and not just applications for refugee protection. Second, if a person has been granted international protection, this person may be joined by a family member as long as this person has also applied for protection in the Dublin area. Third, there is a time restriction of eleven months for a Dublin procedure. Additionally, if a state refuses to take back an asylum seeker from whom it is responsible or refuses to take charge of a request for asylum, it must provide reasons for the refusal. Consequently, the requesting state is allowed to ask more questions to the refusing state; in this case, there are no time limits considering that consensus among the states must be reached (Hruschka, 2014). There were also improvements on the protection of human and asylum seeker rights by addressing more in-depth the protection of minors and dependents, ensuring legal assistance for applicants, providing more information about the asylum system and their rights, and guarantee right of appeal on transfer decisions (Nicoletti, 2014). Last but not least, a system of “early warning and preparedness mechanism” was introduced. Its aim is to tackle
deficiencies identified by EASO in collaboration with Member States in the asylum systems of the Members before they turn into a crisis (Fratzke, 2015). In this way, the EU would be able to take preventive measures before any MS finds itself in a crisis due to asylum seekers arrivals and also provide the appropriate political actions (European Commission, 2016a). By providing a system to ensure preparedness for crises, the ‘early warning and preparedness mechanism’ is also designed to enhance trust among Member States.

However, Dublin III still fails to make changes to a crucial issue, which is that of defining who is the responsible Member State for reviewing applications and providing asylum (Hruschka, 2014; Morgades-Gil, 2015). The Dublin Regulation still remains inefficient for processing large numbers of asylum applications and providing their respective protection –issues that will persist considering that each MS has different asylum systems (Fratzke, 2015; Nicoletti, 2014). Although there is a hierarchy of criteria in place for defining which MS takes responsibility, in reality authorities are not taking this into consideration, which is causing further unbalances in the system (Fratzke, 2015; Garcés-Mascareñas, 2015). For example, according to the hierarchy, ‘family unity’ is be the first and most important criteria to be taken into consideration. Should an asylum seeker have a family member with a refugee status in a MS, then the application of this asylum seeker should be evaluated by that MS and as well as protection (Fratzke, 2015; Garcés-Mascareñas, 2015). However, this important step is being ignore in many cases, intensifying the chaos in the system. Furthermore, Dublin system assumes that asylum seekers will enjoy the same rights and treatment in all MS, which is not the case. Some MS – for example Spain and Greece – have a poor system for asylum (Garcés-Mascareñas, 2015). Specially in 2015 reception and detention centers in Greece were in a bad condition and people with special needs (e.g. elderly, children and people with medical conditions) were not given the right treatment. Detention centers were responsible for “inhuman and degrading treatment” of migrants (Human Rights Watch, 2016e). There were also reports of Greek guards pushing
away asylum seekers and migrants that were arriving through the land border with Turkey. Although it was later revoked by the government, there was a ministerial decision that allowed for the detention of migrants for more than 18 months – which is the time limit allowed by EU law. Poor reception and detention conditions are also present in the asylum system of Spain. Detention centers are treating migrants as if they are in prison, and reception centers are normally over-crowded (Human Rights Watch, 2016e). There are only four reception centers in Spain and these are managed directly by the state; however, to cope with the current crisis, the government is subsidizing NGOs to provide food and shelter to all the migrants that remain out of the shelter facilities (Lyons & Duncan, 2017). These situations demonstrate that their asylum systems are simply not able to cope with standards required by the EU to provide asylum. In contrast, Germany created more reception centers around the country to deal with the asylum seekers crisis. Additionally, the Federal Parliament of the country took the necessary steps to implement a legislation that would “accelerate asylum procedures, improve integration measures, replace cash support with benefits in kind, and expedite construction of new accommodations” (Human Rights Watch, 2016e). This is not to say that their asylum system is perfect, but it is certainly more humane and better prepared than the Greek or Spanish systems.

Therefore, with the peak of arrivals – mostly as a consequence of the Syrian civil war – that began in 2015 and continued throughout 2016, all the gaps from the Dublin system have been exposed. As a consequence, the tensions among Member States on this issue have also increased, and arguably contributed to setting the stage for significant political events like Brexit (Frum, 2016; Hall, 2016). Even though Dublin is in its third phase already, its framework still remains unfair to bordering member states. In fact, the majority of asylum seekers from Syria have arrived to Greece and the Balkans (UNHCR, 2016c). Apart from this matter, asylum seekers are also experiencing human rights violations due to the poor living
conditions they face in overcrowded ports of arrival – such as Greece (Fratzke, 2015; Garcés-Mascareñas, 2015; Nicoletti, 2014). Similarly, the EU is committing ‘indirect refoulement’ – an act that goes against EU law – because some MS have asylum regulations so strict that they allow for asylum seekers to be sent back to their country of origin (Katz, 2017).

2.3 Treaty of Amsterdam

Another milestone of the EU concerning asylum policies was the signing of the Amsterdam Treaty in 1997, which came into force in 1999. After two years of extensive discussions and negotiations, EU leaders finally agreed on how to tackle issues concerning European citizens, the role of the EU regarding international affairs, development of the operations of its institutions, and the idea of expanding the Union (Staab, The European Union explained: institutions, actors, global impact, 2013). The Treaty of Amsterdam integrated in the EU legal framework a new section to deal with visas, asylum, and immigration. This section gave new powers – with specific institutional mechanisms – to existing EU institutions to draw legislations concerning asylum (Sy, Asylum policy, 2016). EU institutions’ function on migration were improved after the Treaty’s ratification (Tabur, 2013). Among these improvements is the Council’s authority to determine the criteria and mechanisms for holding accountable a MS for the processing of an asylum application. The Council is also in charge of setting minimum standards for asylum reception, qualification and procedures (Publications Office of the EU legislation, 2001). The Treaty clearly states in the following article the responsibilities of the Council of the European Union for asylum and immigration policies:

“The Council, acting in accordance with the procedure referred to in Article 73o, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt: (1) measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the
status of refugees and other relevant treaties, […] (2) measures on refugees and displaced persons […], (3) measures on immigration policy, […] (4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States”. (Treaty of Amsterdam, 1997, art. 73k).

As mentioned before, since the creation of the Schengen area, there was a common concern among MS regarding asylum and the search for a cohesive policy on this matter. For this reason, Schengen members created the Dublin Regulation, a system that would assign responsibility to a MS for the protection of an asylum seeker. It was agreed under this Treaty that measures on asylum and immigration had to be reached in five years. Therefore, the mechanism of Dublin was kept in place, and it provided the start (or the basis) to achieve this goal.

The Treaty also reinforced the free movement of people inside the Schengen area. This was done by integrating the Schengen Agreement (Nicoletti, 2014). As previously mentioned, this agreement removed border control between those members who signed the agreement. By including Schengen in the Treaty, EU members automatically approved on the following criteria from the Agreement: common rules for asylum; police cooperation on criminal matters across borders; a cohesive list defining the countries whose nationals need visas to enter the territory; the Schengen Information System (a database that deals with specific criminal records for police and consulates use); and cooperation for drug-related crime (Peter, 2016). Collaboration with third countries was also part of the Amsterdam Treaty, as “asylum and migration cooperation [was moved] from the JHA pillar to the Community pillar” (Chou, 2009, p. 547). As a result, the EU had to develop new immigration and asylum policies, but unfortunately these policies only made it harder for people in need to obtain asylum in Europe (Hayes, 2004). As a result, these stricter policies would then encourage immigrants to utilize
illegal routes to arrive to the region. Thus, instead of implementing measures that would give asylum seekers a legal channel for entering the region, the Union opted to create stricter rules to prevent the arrival of these people in need. Naturally, if an asylum seeker is desperately looking for a safer ground, he/she would find the necessary ways to do so, even if it implies irregular means. Examples of strict measures are: implementation of difficult requirements for asylum and visa applications, surveillance and expulsion policies, creating ‘safe country of origin’ lists (explained below) which allows the State to return the asylum seeker back to the country where he/she travelled from, and reducing the age limit in EURODAC (EU’s database for asylum seekers’ fingerprints) from 18 to 14-year old.

In the same year that the Treaty came into force (1999), the EU held a special summit in Tampere, Finland, to further discuss justice and home affairs (Tabur, 2013). The final statements from the summit made it clear that the EU would take the necessary measurements to impede the entrance of undocumented, illegal and/or irregular immigrants from entering the region. Those who still manage to enter, risked their chance to apply for asylum. The EU would also start making use of ‘safe country of origin’ lists (Hayes, 2004). The list entails the names of countries which the EU perceives as “safe”, meaning that their citizens do not necessarily need protection/asylum and they can be returned safely to their countries of origin. Of course, a conflicting issue that comes with such measure, is how can a country be labelled as “safe”? Until this day, the guidelines to define it are not clear and in many cases this can put in danger the lives of those who get sent back. Comparably, there was now also a regulation in place which allowed the making of a ‘white-list’, ‘blacklist’, and ‘Common Consular Instructions’ (Hayes, 2004). Countries in the white-list do not need a visa to enter the EU. The opposite then applies for those in the blacklist, meaning that citizens from these countries need visas to enter the EU. The visa requirements are then established by the Common Consular Instructions, this is in order to have a general guideline on what is exactly needed to obtain a visa.
EURODAC was agreed in 1988, and before it was implemented in 2003 under Dublin II, it was adopted as an EU regulation in the Treaty of Amsterdam (Hayes, 2004). Hence, making it another of the measures taken by the EU to control immigration and asylum, assign responsibility, and deport if necessary.

Overall, the Treaty of Amsterdam strengthen intergovernmental cooperation among its member states and it also increased the legislative power of the EU, especially that of the European Parliament (Staab, The European Union explained: institutions, actors, global impact, 2013).

2.4 Treaty of Lisbon

By 2009, according to the European Commission (2009), the European Union needed to update some of its rules, since they were based on the union of its first 15 members. The changes would also encourage for an increase of support among EU’s members, to cooperate on issues that affect them all. Thus, the Union’s enlargement (from 15 Members to 27) and changes of responsibilities, due to the actual size of the EU, demanded for modifications in the system. This is why in 2009 a new treaty, the Treaty of Lisbon, entered into force and changed important aspects on the decision-making process of the Union. One of the most prominent changes, is the move towards a more democratic system. Which was done by increasing even more the European Parliament (EP) power –which now holds “consent requirement” (Tabur, 2013)– and also increasing the power of national parliaments from each Member State, and linking them to the EP. As a result, national parliaments now hold a greater role in European legislative acts. They can now contest a decision after eight weeks of adoption of the proposal, from which after the Commission must review again the proposal and either maintain it, amend it, or withdraw it. In case the Commission decides to maintain the legislative proposal and more than half of the national parliament voted against, the Commission must provide a detailed
explanation of its decision. Additionally, national parliaments can also have an influence through their Ministers, allowing them to voice their respective national interests. The Ministers now have a say in the Council of Ministers. Moreover, the Treaty also gives citizens a greater voice in the process. According to the European Commission, citizens can now request the Commission to propose new initiatives. This point together with the changes of the national parliaments’ role, encourages for more national and regional identity. But the most important change that the Treaty of Lisbon brought, were those made on the European legal and political system (Mirschberger, 2012). One of the most relevant alterations of the EU’s decision-making process, was the removal of Pillar III (European Commission, 2009). The Third Pillar was built to deal with cooperation on Justice and Home Affairs (JHA), which encompasses issues of national sovereignty and identity, such as immigration, asylum, internal security, etc. (Peers, 2008; Staab, 2013). Removing the third Pillar means that all matters of policing and criminal law, were now transferred to Title IV of the Treaty, which deals with immigration, asylum and civil law (Peers, 2008). The termination of the Third Pillar was adopted in order to move from unanimity to a “qualified majority decision-making based on proposals from the Commission, and co-decision with the European Parliament which becomes the rule for all legal acts” (European Commission, 2009). With the Qualified Majority Voting (QMV) the Council should be able to make legislative decisions easier considering that no MS would have veto power based on its national interest(s) (Basilien-Gainche M.-L., 2012). Important to highlight for the purpose of this thesis, is that the new rule for defining issues concerning immigration and asylum (including asylum policy, irregular migration, and freedom of movement for third-country nationals), external border controls, visa conditions and procedures, is through QMV together with co-decision between the Council and the EP (Peers, 2008).
[The Union] shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals. (The Lisbon Treaty, 2008, Article 67(2))

As mentioned in the first section of this chapter (under Schengen Agreement), ensuring the absence of internal borders still remains a must for the EU. Having consensus on a common policy for immigration, asylum and external border controls has been part of the EU framework since before the Treaty of Lisbon, however, as stated in Article 67(2) this must now be done “based on solidarity” and “fairness towards third-country nationals”. Article 80 also emphasizes that immigration and asylum policies must be based on ‘solidarity’ and ‘fair sharing’ the responsibilities that emerge from inflows to the region between all MS –such responsibilities include, but are not limited to, financial implications. Keeping this in mind is crucial for the purpose of this analysis because, as will be seen later in the analysis of the EC legislative packages, ‘solidarity’ and ‘fairness’ is the base for many of the Commission’s proposals.

Another article that matters for the discussion of the so called “refugee crisis” from 2015 and 2016, is Article 78. More specifically section 2c and 3, which state the following:

2. … the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(c) a common system of temporary protection for displaced persons in the event of a massive inflow

3. In the event of one or more Member States being confronted with an emergency situation characterized by a sudden inflow of nationals of third
countries, the Council, [by QMV] on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament. (The Lisbon Treaty, 2008)

Although the term ‘sudden inflow’ might be debatable, the refugee crisis that has shaken the European region would still fall under these provisions as stated by the TFEU. This means that EU bodies and MS should follow the necessary steps for providing solutions for the large numbers of asylum inflows. If they have done this or not, is a matter that will be discussed later in the analysis of this thesis.

The Treaty of Lisbon also gives a small addition to the power of the EC regarding asylum. The EC has the responsibility on drawing measures for asylum, refugees, and displaced persons matters. The EC has the responsibility of settling “burden-sharing and determining responsibility of applications” (Peers, 2008, p. 233), measures that will be observe in the legislative packages from the Commission and in accordance to the Dublin Regulation (under Chapter 5). Additionally, the Commission now has the power of starting infridgement procedures to MS who violate measures on the implementation of immigration and asylum (Basilien-Gainche M.-L., 2012).

The Treaty of Lisbon also brought new positions that play key roles in the policy-making process of the EU. Specially the new High Representative of the Union for Foreign Affairs and Security Policies (HR), adds an important value to the topics that have been discussed so far. The HR is both a chair member from the Foreign Affairs Council of the Council of the EU and also the Vice-President of the EC (Mirschberger, 2012). Hence, the HR is in charge of conducting the EU’s foreign and security policies, ensures consistency in external actions and is the face representing the EU in international meetings (e.g. United Nations). So, by having one representative for foreign affairs, the EU seeks to enhance its external actions and relations to portray itself as a more cohesive governmental body. However, as explained by
Mirschberger (2012), this position is not as strong and significant as the one from the President of the EC, who is the face of the EU and holds an important legal position in the Commission. For the scope of this paper, it is also important to explain that, according to the Lisbon Treaty, in special cases the Council alone can adopt legislative acts. The European Parliament may adopt legislative acts alone as well, but this happens only on specific cases – “such as internal market exemptions and competition law” (European Parliament, n.d.). One of the special cases in which the Council may adopt legislative acts alone is on Justice and Home Affairs matters. It can be predicted that this point may bring tensions between MS (who embody the Council) and the powers of the EC. In fact, finding a ground for collaboration and agreement for migration policies between MS and the EC has been an existent struggle for years (Papagianni, 2013). The reason is simply because it jeopardizes to a certain extent the sovereignty and national interests of MS.

Under the Treaty of Lisbon, the Charter of Fundamental Rights (CFR) became “a legally abiding instrument of primary law [for all EU institutions and MS]” (Weiß, 2012, p. 220). EU’s CFR states the right to seek asylum and prohibits non-refoulement (UNHCR, 2015). In this regard, finding ways to fight illegal smuggling webs is necessary for the EU and its Members; however, this must always be done while ensuring that the right to life, liberty, security, non-refoulement, and family life are protected. One disadvantage, is that the Charter does not provide a mechanism for helping asylum seekers to enter the region through legal channels, meaning that MS only have the obligation to act in accordance to the CFR once asylum seekers have arrived to European shores (Katz, 2017). Nonetheless, all MS and the encompassing territory of the Union still must respect the rights established by the CFR and abide by them (Katz, 2017).
EU’s migration and asylum policies have been born out of random events caused by the formation of the Union and its respective agreements and regulations (Chou, 2009). The decisions have been made from pressures and uncertainties amounted by the different events (Papagianni, 2013). For example, while creating the Schengen area to promote a bigger and stronger economy, states built a system that encouraged freedom of movement of workers, however, they failed to agree on policies that would benefit the lives of these workers and their families. Many of these workers had families in their home countries, and once they established a stable life with a good job, they were not going to leave their new homes so easily, but rather stay together with their families. (Koikkalainen, 2011). The Schengen Agreement is also what led the way to creating regulations regarding asylum and migration. In fact, the Dublin Regulation was created just to assign which MS was responsible for asylum. But, the Regulation was never intended to create a system of ‘shared responsibility’; its main purpose was to avoid “asylum shopping” and “asylum seekers in orbit” (Fratzke, 2015; Nicoletti, 2014). Furthermore, EU citizens are no longer the only ones who enjoy this right of free movement in the region. Third-country nationals also take advantage of this once they enter the region. They do this regardless of having legal documents (e.g. refugee recognition does not apply in all countries but only in one) to do so or not (Ammirati, 2015; Koikkalainen, 2011). It is only natural that asylum seekers have preferences, because although they are in desperate need for safer grounds, they also have the need to establish themselves in a country where they can have economic sustainability (with jobs) and opportunities (Garcés-Mascareñas, 2015). However, although is not ethical, allowing free choice is problematic because no MS will accept nor will it be able to cope with disproportionate numbers of asylum seekers (Katz, 2017). The year 2015 was a challenging year for the EU and its MS. The numbers of arrivals of asylum seekers, together with the terrorist attacks in Paris, have demonstrated the weaknesses of the Schengen Agreement. The reaction of many Members was to close their borders, while bodies
of the EU (e.g. EP and EC) expressed that the management of external borders had to be strengthen by increasing security control and measures to prevent arrivals (Malmersjo & Remáč, 2016). The crisis has also made it very clear that Dublin III does not have the right structure to deal with large numbers of asylums seekers inflows (Fratzke, 2015). It is a system that is also expensive to maintain, taking into consideration its supporting mechanisms such as EURODAC.

Although the Treaty of Lisbon provides more competent provisions for the EU to act on issues regarding asylum and immigration (Peers, 2008) and allowed for the commitment of creating a ‘common immigration policy’ (Tabur, 2013), regulations like Dublin, States sovereignty, and the “vast array of policy actors… [and] instruments” (Papagianni, 2013, p. 286) still set limits for the creation and implementation of sustainable solutions for the inflows of third-country nationals. In fact, while the Treaty of Lisbon included in The EU’s legal framework the CFR, Member States still prioritize their security interests (Basilien-Gainche M.-L., 2012), which in effect diminishes the idea of having a common asylum policy. Similarly, MS and also the EU still prefer to hold policies and regulations that prevent the arrival and expelling of asylum seekers.

The EU and MS also have the responsibility of abiding to international and EU law when creating asylum and migration policies. Therefore, the processes must always take into consideration the 1951 Refugee Convention, international human rights conventions, the EU Charter of Fundamental Rights, and the Law of the Sea Convention (UNHCR, 2015).
Chapter 3: Methodology

As an economic-politico union that encompasses 28 Member States and multiple institutions, the European Union is a complex organization. Understanding its decision-making process in all the different levels is a rather complicated task, and could be a thesis on its own. Therefore, for the purpose of this research, the focus is only on the EU’s policy-making process regarding asylum – and migration to some extent. As it was explained in the first chapter, all asylum seekers are migrants, but not all migrants are asylum seekers, and this difference is important. Notwithstanding, migration and asylum issues go mostly under the same policy framework, especially when it refers to the general policies of the EU. Migration and asylum are together under the umbrella of the EU Immigration Policy Framework established by the Stockholm Programme in 2009 (European Commission, 2010). This is why migration is mentioned to some extent throughout the paper. More specifically, the thesis is focused particularly on the EU’s reactions towards the current asylum seekers crisis, meaning that the policies to be analyzed have to deal with this special need and not just with migration policies in general. The migration crisis that Europe is facing at the moment started in 2014, but the biggest peak of arrival occurred in 2015. More than a million refugee arrivals made the event one of the worse ones in the European history. Hence, the timeframe to study the migration crisis will be from 2015 to 2016. It is true that by 2016 the number of arrivals reduced exponentially, but the tensions among MS remained high. Thus, for this thesis, the term “current migration crisis” refers to the arrivals of irregular migrants and asylum seekers to the EU from 2015 until the end of 2016. The chosen method to analyze this issue is legal policy analysis. It is a qualitative research method based on the comprehensive contextual analysis of policies, regulations, and
institutions concerning the desired topic – in this case, the European Commission’s legislative packages in response to the refugee crisis. This method allows the researcher to take a closer look at the process of asylum policies and regulations, to not only understand better how the EU has been reacting to the refugee crisis, but also why it has reacted in that way and what are the possible constraints for keeping harmony in the Union. The legislative packages together with the regulations in place (explained in chapter two) and the reaction of the Member States towards them, give a better understanding on the actions and consequences of the EU towards the migration crisis.

According to the European Commission’s database of legislative documents on Migration and Home Affairs (2017), there was a total nine months between 2015 and 2016 in which the EC drew proposals in reaction to the “emergency situation in the Mediterranean”. Some of these months had a single proposal, but the others consisted of “packages”, which means that there was more than one proposal under the same reaction. The thesis analyzes six of these proposals/packages. The selection of the cases is based on the Eurostat (2017b) Asylum Quarterly Report Q4 2016 (Figure 3). The graph compares the number of first time asylum applicants entering the EU in 2015 and 2016. To have an even and comparative analysis of the European Commission’s reaction towards the refugee crisis, the legislative packages are equally selected for both years according to their significance and the number of asylum seekers arrivals. The first four cases are selected according to the two highest months of arrivals from 2015 and 2016, them being: October (2015), September (2015), August (2016), and June
(2016). The remaining two cases are selected according to the lowest month of arrival from each year: April 2015 and December 2016.

Not all the months selected have a proposal. Therefore, within a range of maximum three months, the nearest proposal to that month is selected. Thus, the specific cases to be analyzed are the following:

1. In October 2015, there was no proposal, so the proposal from December 2015 is selected.
2. The implementation package of proposals from September 2015.
3. In August 2016, there was no proposal, so the proposal from October 2016 is selected.
4. There was no proposal in June 2016 either, but there is on next month, so the proposal from July 2016 is selected.
5. Similarly, in April 2015 there was no proposal, but the proposal from the following month (May 2015) is selected.

6. In December 2016, there was no proposal either, so the proposal from January 2017 is selected.

The analysis of the legislative packages selected aims to identify the responsibilities assigned by the European Commission to Member States (e.g., refugee quotas and financial contribution), changes applied to the established EU policies and regulations, reactions from the Member States, etc. In this way, not only the reaction from the EC is evaluated, but also the political atmosphere of the region.

In short, the thesis examines EU’s policy-making process regarding the current refugee crisis, through the legal policy analysis of the EC’s legislative packages (with the respective MS reactions) and EU’s asylum policies (see chapter 2).
Chapter 4: Empirical material analysis

4.1 The proposals

4.1.1 Proposals package from May 2015

In Eurostat’s asylum applications 2015-2016 chart (explained and shown in the previous chapter, Figure 3), April was the lowest point in the curve from the year 2015. However, there were no proposals set by the EC in this month, so the proposals package from May is analyzed instead. From May onwards, the arrival of asylum seekers to the European region started increasing exponentially, until October –the numbers started dropping by November. The proposals from May were part of the first implementation package in reaction to the asylum crisis.

Proposal for the benefit of Italy and Greece

According to the Commission, statistical information at the time, made it clear that two frontline Member States, Italy and Greece, were facing an “exceptional migratory pressure”. The figures showed that there was a large number of arrivals of persons in clear need of international protection in 2014 and 2015. Due to their geographical position, Italy and Greece are directly affected by the conflicts of their neighboring countries and regions and were, as a more exposed vulnerable than the rest of Member States. When the EC made the proposal, the large inflow of migrants was not expected to decrease, and while the two MSs (Italy and Greece) were already struggling with their asylum systems, the continuous pressure was

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anticipated to make it even harder for them to cope with the situation. The EC explained that no other MS was in a state of emergency as were Italy and Greece, which is why the proposal was specially made to help these two Members.

The measure proposed by the EC was to relocate asylum applicants who are in clear need of protection from Italy and Greece to another MS – this MS is then referred to as “Member State of relocation”. The MS of relocation would then become responsible not only for the asylum of the applicant, but also for reviewing his/her application. According to this proposal, 24,000 applicants from Italy and 16,000 applicants from Greece (a total of 40,000 applicants) should be relocated to another MS in a period of two years. The number of applicants for relocation, were based on the number of arrivals in each country. These 40,000 applicants only amount for 40% of the total number of applications from irregular arrivals of persons that are in clear need of protection, whom arrived to Italy and Greece until that month. Therefore, according to the EC, the proposal created a fair distribution of the burden between Italy and Greece and the other Members. In case another MS also faces an emergency situation, and if appropriate, the MS could be suspended from its responsibilities established under this Decision. Additionally, Member States of relocation would receive financial support from the AMIF with a EUR 6,000 compensation for each applicant it takes from Italy and Greece. Another provision proposed for the aid of Italy and Greece was to provide them with technical and operational support from relevant agencies (e.g. EASO), in order to help them react more effectively. Under this proposal, Italy and Greece also had the obligation to provide the EC with a roadmap specifying their actions to deal with the emergency situation.

Furthermore, the Decision also guaranteed the following to the applicants: the right to receive information on the relocation procedure; the right to be notified about the relocation results; the right to be relocated with family members in the same MS; protection of the best interests of the child during the process.
The measures established by the proposal would help Italy and Greece to deal effectively with the significant inflow of third-country nationals. These provisional measures were proposed to be enforced for a period of two years. The EC explained in the proposal that, because this emergency situation of Italy and Greece affected all Member States, due to the secondary movements that were taking place, the actions to tackle this issue were better decided at EU level rather than by individual MSs. The proposal added an additional cost of EUR 240 million to the EU budget.

Proposal for resettlement

By 2015, out of the 28 MS, only 15 of them had a resettlement program, proving that Members were lacking commitment to resettle persons in need of international protection. According to the EU, resettlement is “the transfer of individual displaced persons in clear need of international protection, on request of the UNHCR, from a third country to a Member State” (p. 4). That is why, the creation of a process for resettlement was a joint effort of the UNHCR and the EU. As explained in the proposal, the UNHCR is responsible for evaluating the applications from the selected priority regions (Middle East, Horn of Africa and North Africa), and submitting the proposals of resettlement to the Member States; and Members are responsible for the admission decisions, which entailed medical and security checks. Once a person was admitted to a MS, the person had to undergo the procedure for international protection (which includes collecting the applicants’ fingerprints information). Furthermore, resettled persons in the EU should enjoy the same protection benefits as a refugee. Thus, resettled persons must be informed about the restrictions under their status and, specifically, about the fact that this status is only valid in the State that granted them resettlement.

In 2014, out of the 626,000 asylum applications only 6,380 third-country nationals were granted resettlement in the EU. As stated by the EC, increasing resettlement in the Union, can be of help to decrease the use of illegal smuggling webs. Therefore, the EC was recommending in this proposal to resettle 20,000 applicants during a two-year period, which had to be fairly distributed among Member States. As a result, the distribution of resettlement was based on the following information from each MS:

1. “Size of the population (40% weighting) …
2. … Total GDP (40% weighting) …
3. … Average number of spontaneous asylum applications and … of resettled refugees per one million inhabitants over the period 2010-2014 (10% weighting) …
4. … Unemployment rate (10% weighting)” (p. 3)

Nonetheless, according to the EC, for the resettlement proposal to be successful, there had to be further measurements to prevent secondary movement of the resettled persons.

Lastly, the Commission granted an extra EUR 50 million for the Union Resettlement Program for the years 2015 and 2016 –a program that applies to all Member States. The distribution of the financial compensation for each MS, was based on this sum and the number of persons the Member resettled.

Proposal for an EU Action Plan against smuggling

This document begins by noting that many of the refugees arrive to the region through “ruthless criminal networks” (para. 4). Therefore, according to the Commission, the EU should have a stronger stance on defeating migrant smuggling. In order to destroy these smuggling webs,

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apprehend the smugglers, and “seize their assets”, the document recommends that EU works together with “third-countries of origin and transit, strategic partners, international organizations, and civil society” (para. 8). It is for this reason, that the first EU Action Plan against smuggling was created. The Action Plan aimed to combine different approaches for tackling the issue, and bring together different actors and institutions from the affected regions – from local, national, and international community levels. In the Communication the EC stated that, “smuggling networks can be weakened if fewer people seek their services” (para. 11). According to the document, one way to weaken this phenomenon, is to create safe and legal ways for people in need of protection to enter the EU. Additionally, those who do not have the right to stay in the EU, should be sent back, which means that the return policy from the EU should also be reinforced. As a result, if migrants would see that paying high prices for smuggling does not guarantee them staying in the EU, it was expected for the use of smugglers to decrease. The EC would give technical support to countries of origin and transit, for them to have a better integration system for the returned migrants.

The EC proposed in its EU Action Plan the following four strategies to tackle migrant smuggling:

1. Increase police and judicial response: among different actions, the EC would increase EU’s legal framework of migrant anti-smuggling, it would create a list of “suspicious vessels” and monitor these together with relevant EU Agencies (especially Frontex), it would support MSs financially and technically to tow and dismantle smuggling boats, seize the profits from smugglers, etc.

2. Ameliorate the system for gathering and sharing of information: the EC would work closer with third countries, take advantage of all EU tools to gather information, monitor internet content to tackle the use of internet by smugglers to attract migrants, etc.
3. Improve the prevention of smuggling and help provided to vulnerable people: as explained by the EC, smugglers use social media to attract migrants, therefore, the Commission would launch a campaign to counter attack smugglers stories. The idea was for the campaign to provide more information about the violence and abuses that result from these smuggling webs. Additionally, the EC was also proposing in its EU Action Plan, to help business operators (e.g. transport and shipping companies) to prevent migrant smuggling.

4. Increase cooperation with third countries: as a way to tackle root causes of the smuggling issue, the EC explained that there had to be closer cooperation with the third countries where smuggling webs exist. Border management and increase employment in third countries, are examples of such cooperation. The EC together with EEAS agreed to assist financially and technically third countries to help them improve their anti-smuggling systems/strategies. The EC stated that in order to create a more effective system with a higher impact, there had to be a certain degree of synchronization of EU’s external actions, Member States, and stakeholders.

Working document for the fingerprint system

As part of the proposals package from May 2015, the Commission created a document to present examples of the best practices for dealing with EU’s fingerprint system and, in this way, ensure that all MS follow their obligations established by the Eurodac Regulation. By presenting these examples, Member States can be better guided to implement appropriately the fingerprint system, while at the same time respecting the fundamental rights provided by the

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Charter. In this document, the EC explains that for different reasons, but mostly because of secondary movement, migrants refuse many times to cooperate on the collection of fingerprint data. Therefore, in order to obtain cooperation from the migrant and to obey EU law, Member States could use the following recommendations:

1. The MS should explain to the migrant that it is an obligation under EU law to be fingerprinted and that not doing so can affect greatly their interests. Under the Dublin Regulation, fingerprint data is a mandatory step for asylum application and for the transfer (should it be the case) to another MS.

2. If the migrant has not applied for asylum, and refuses to be fingerprinted, he/she can be considered an irregular migrant and hence be detained if the MS has no other “less coercive alternatives”. A migrant cannot be considered for return until he/she follows the identification process – which entails fingerprint.

3. If the migrant did apply for asylum, and refuses to be fingerprinted, then he/she may be detained for the MS to obtain or verify his/her identity or nationality.

4. A migrant’s application for international protection may be “subject to an accelerated and/or border procedure” if he/she refuses to cooperate. In this way, as a consequence, his/her application “may be considered as manifestly unfounded”. The applicant’s right to stay in the territory is rejected, which consequently may result on his/her return. An order for return may even be drawn together with a ban to enter the EU territory for up to five years.

5. EU law states that, the person can only be detained for the shortest time possible and necessary.

6. Whether the migrant is detained or not, the MS is obliged to inform him/her of his/her rights and obligations as an asylum seeker or irregular migrant, and to provide him/her with counseling. An explanation of the Dublin Regulation must be included.
7. If after counseling, the person still refuses to cooperate, and following the principles from the Charter, the MS can use as a last resort coercion. However, the person must be informed that he/she will be subject of coercion in order to obtain the fingerprint data. The MS must use the minimum level of coercion and it must proof that it was its last resort. It is never appropriate to use coercion on vulnerable persons (e.g. pregnant women and minors), but if the MS does, then coercion must be adapted for such person.

8. It is suggested that Member States do not take fingerprints twice for the same migrant. Therefore, MS should have a system in place that uses fingerprint data for both Eurodac System and for their own national systems.

9. If the migrant’s fingertips are damaged, and if there is a reasonable amount of time for this to recovered, then the MS may use detention until fingerprints can be taken.

10. Once fingerprints are collected, the migrant should be released from detention.

4.1.2 Proposals package from September 2015

The second highest peak of asylum applications in the EU in 2015, occurred in September. It was the fourth consecutive month in the year with an increase of asylum seeker arrivals and the first time that the numbers exceed the 160,000 asylum applications (see Figure 3 in methodology for more details). Considering that the numbers of arrivals were already high by September, the European Commission had a quick reaction and presented the following proposals.

Proposal for a crisis relocation mechanism

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The objective of the proposal was to ensure that the EU has at its disposal a strong mechanism for the relocation of asylum applicants to react properly and effectively in case of an asylum crisis/emergency. In this way, the EU can guarantee a “fair sharing of responsibilities” of these applicants among Member States, and the right application of the Dublin system. Additionally, the proposal was composed of further measurements to alleviate the asylum pressure that Italy, Greece and Hungary were facing at the time.

The crisis relocation mechanism proposed by the EC called for the participation of Member States, where they should complement the mechanism by implementing local measures. According to the Commission, this new system encourages MSs to deal with migration pressure in a better and more effective way, but at the same time, complying with the fundamental rights proposed by the Charter. Additionally, it strengthens Members’ capacities for dealing not only with migration and asylum issues, but also with internal security challenges. It is a mechanism that “establishes, for well prescribed crisis circumstances, a mandatory distribution key for determining the responsibility for examining applications” (para. 14). The proposal suggests to create a relocation mechanism to be activated only when there is an emergency situation – as is the case with the current migration crisis. For this reason, this mechanism is only temporary and not a permanent measure. The EC proposed for this system to be part of EU’s legal framework, in order for it to be triggered in future emergency situations. Thus, allowing the Union to be better prepared during critical events. The way in which the EC determines if a migration situation is a “crisis”, is by evaluating information collected by EASO and Frontex.

These are some of the essential elements of the crisis relocation mechanism proposed:

1. The MS responsible for reviewing an asylum application, is the MS of relocation. In this way, the procedure helps to speed up the process of asylum seekers transfers between Member States.
2. Fingerprints of the applicants must be taken; without this the transfer cannot be made.

3. Once the EC has analyzed the information provided by EASO and Frontex, and determined that the crisis conditions have been met in a MS, the EC must adopt a delegated act to trigger the mechanism in that MS. This delegated act should: a) confirm the crisis in the benefiting MS; b) determine the number of asylum seekers that have to be relocated; c) determine the distribution of asylum seekers between MS using the formula for a distribution key; d) set a period for the application of the mechanism (with a maximum of two years). This delegated act can enter into force only if the EP and the Council do not object.

4. Should a MS with “duly justified reasons” proof that it cannot take part (fully or in part) in the relocation mechanism, this MS then has to “make a financial contribution to the EU budget of an amount of 0.002% of [its] GDP” (para. 42) to compensate the efforts of all the other participating Member States. If the MS is partially participating, then the amount decreases proportionally.

5. Based on the EU principles of solidarity and responsibility, the benefiting MS has to hand-in to the Commission a roadmap specifying the measures it is taking into consideration to ensure the appropriate implementation of the crisis relocation mechanism.

Because the crisis relocation mechanism was designed to enhance the Dublin system, the proposal has strict conditions meant to deal with the crisis of relocation in individual MS. As stated by the EC, this mechanism should be carefully implemented especially if the crisis is jeopardizing in any way the implementation of the Dublin Regulation. Furthermore, the EC indicated that, the tools the EU had in place at the moment of the crisis in 2015 to react to extreme asylum pressure were not sufficient. Neither were the Commission’s financial and operational measures, nor the support from EASO. Therefore, the EU (through the
Commission’s proposal) had the right to step in and create the necessary measures. Nonetheless, setting up this new framework, an explained in the proposal, did not affect EU’s budget.

Proposal for the creation of a list of safe countries

Due to the pressure of the migration crisis, the Commission pushed to have a more “effective” approach and to “strengthen the safe country of origin provisions” (para. 1). Not all MS have a list of safe countries of origin, and those that do, have different lists which causes issues. By not coinciding in the countries that they list as safe, MS affect the opportunities that asylum seekers have when applying for international protection. For these reasons, this proposal of the EC aimed to: 1) establish an EU common list to facilitate the asylum procedure of Member States; 2) reduce existing differences between the national lists of safe countries of origin from Member States, resulting in the facilitation of procedures and the prevention of secondary movements. Based on information from EEAS, Member States, EASO, the Council of Europe, the UNHCR, and other relevant international organizations, the Commission concluded that the following were the safe countries of origin at the time this proposal was drawn: Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia, and Turkey.

The proposal was based on Article 78(2)(d) of the TFEU, which provides “legal basis for measures on common procedures for the granting and withdrawing of uniform asylum and subsidiary protection status” (para. 23). But at the same time, as stated by the EC, the proposal respects the fundamental rights of the Charter, including the right to asylum and protection

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against refoulement. Thus, under this proposal, a person can still have examined his/her application for international protection even if he/she is from a safe country given that the person is under threat in that country.

As explained in the proposal, the EC has the obligation to regularly review the situation of the countries in the list. In this regard, the EC has the power to suspend from the list for a period of a year a country that no longer can be classified as safe. However, this delegated act can only enter into force if there’s no objection from the EP and the Council. Last but not least, the proposal did not affect the EU budget.

4.1.3 Proposals package from December 2015

October had the highest peak of asylum applications in 2015, however, the European Commission did not draw any proposals until December of that year. As mentioned before, the EU faced the highest number of asylum seekers arrivals this year, this exceptional circumstance encouraged the EC to make a strong legislative package of proposals by the end of the year. The package consisted of four proposals, each one of them addressing a different issue.

Proposal for the benefit of Sweden

The aim of the proposal was to implement provisional measures for the benefit of the most affected Members from the refugee crisis. Therefore, the proposal consisted of two Decisions adopted by the Council. The first one was a compensatory measure for Italy and Greece, with a new quota of relocations of asylum applicants. According to the Decision, 40,000 applications for international protection had to be relocated from Italy and Greece to other

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Member States. This is in addition to the 120,000 applications for relocation, with the same conditions, that were set in September. Thus, the total of relocations by December 2015 was 160,000. The second Decision was to implement measures for the benefit of Sweden. This was necessary after Sweden notified the EC and the Council about its “emergency situation” regarding “a sudden inflow of nationals of third countries in its territory” and requested for a suspension of its responsibilities. According to the Commission, Sweden provided “duly justified reasons”, which were supported by Eurostat’s figures. For this reason, the Decision suspended Sweden of its relocation mechanism responsibilities for one year, and it also provided the MS operational support to cope with the crisis. However, Sweden still had to relocate a total of 5,727 applicants from Italy and Greece. Important to remark, is that this proposal did not affect EU’s budget; thus, no additional costs were caused.

Proposal for a European travel document

According to the EC, “increasing the rate of return of irregular migrants frees up capacities for welcoming those genuinely in need of protection… An effectively implemented and credible return policy goes hand in hand with a more open migration policy” (para. 2). However, the EU system that is in place to return irregular migrants is not “sufficiently effective”. The main obstacle for returning irregular migrants, is their lack of a valid travel documents. The EU has a standard travel document to be used when expelling third-country nationals, however, considering that this document was established in 1994 by the Council Recommendation, its recognition from third-countries is rather low. That is why the objective of this proposal was to establish a European travel document that can be used to return third-country nationals who

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are subject to return. The creation of a European travel document encourages a uniform format, increases third-countries acceptance and readmission of third-country nationals by improving the technical and security features of the document, decreases bureaucratic and administrative burdens of Member States and third-countries, and it helps to keep expenses on a minimum. In order to ensure “uniform and harmonized features” in the creation and adoption of such document, the Council decided to implement the proposal as a Regulation and to be the replacement of the Council Recommendation from 30 November 1994.

Proposal for a European Border and Coast Guard

In this proposal, the EC explained that the large and irregular arrivals of third-country nationals caused instability in all the European region. This was mainly because of crossings of external borders accompanied by secondary movements (moving from the first country of arrival to another MS). The crisis has demonstrated that the EU and its Members do not have appropriate mechanisms in place to cope with the large influx. According to the Commission, the migration crisis made it clear that the Schengen area is only functional, if its external borders are “secured and protected”. It is then necessary to increase the security of external borders and in this way also restore the public’s confidence in the EU. Therefore, the objective of this proposal was to set up a European Border and Coast Guard, that would consequently help to create an integrated European border management of EU’s external borders, respond effectively to migration issues, ensure a high level of security for the EU territory, and it would also maintain and protect the free movement of EU citizens.

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Considering that the migration crisis cannot be tackled if Member States react individually in “an uncoordinated manner”, the proposal was suggested to be adopted as a Regulation. That is because a Regulation eliminates optional provisions and, instead, makes all measures mandatory for all MS. As explained by the Commission, the draft Regulation, was their contribution for “rendering border management more effective and reliable by bringing it to a new level of responsibility and solidarity” (para. 11). The Regulation sought to strengthen border management policies by increasing Frontex’s role and the surveillance at sea borders, and by encouraging Eurosur cooperation and information exchange among MS and the European Border and Coast Guard Agency. Additionally, it set a “vulnerability assessment”, which is a system to prevent reaching a crisis situation again in the future.

As explained by the EC in the proposal, the draft Regulation was a response to the challenges and political realities that the Union was facing in 2015 in relation to migration management and internal security. Lastly, the budget for these mechanisms and operations was tripled as part of the Regulation.

Proposal for the reinforcement of checks\[^{10}\]

Member States are always obliged to check third-country nationals when entering the region. However, they were not obliged to do so when exiting. With this proposal, the Commission intended to establish the obligation of systematic checks on entry and on exit, in order to intensify external borders controls. Systematically checks of travel documents on exit were proposed to ensure that third-country nationals are not a threat for “public policy and internal security”. The Regulation also “introduced the facial image and fingerprints as security

elements in the passport of EU citizens” (p. 7). This measure allows for border guards to double check with these biometric identifiers, when in doubt, if the passport and the holder match. As stated by the EC, the proposal was built in close collaboration with Member States, and it was a direct response to the terrorist attacks that took place in Europe in 2015 – especially the attacks in the French capital, Paris, in November. Additionally, the EC also finalized a set of “common risk indicators” to identify foreign terrorist fighters, which was suggested to be used by border guards. If possible and necessary, the Commission shall suggest “relaxations” of the border checks in its biannual reports on the Schengen area.

The new measurements are, therefore, in line with (but with amendments) to the Schengen Borders Code. The EC indicated that, to ensure security and citizens’ right of free movement, checking databases at external borders is a necessary measure. Controls help prevent threats to the internal security of the Member States; and since controls and rules should be common for all Members of the EU, this was an issue that was preferably handled at Union level. Lastly, the proposal, which established amendments to the Schengen Borders Code, was suggested to be better adopted as a Regulation and it did not affect the EU’s budget.

4.1.4 Proposals package from July 2016

June had the second highest peak of asylum applications in 2016, however, there were no EC proposals this month, that is why, the proposals from July are analyzed. The numbers had slightly decreased from June to July, but the measures taken by the Commission show how critical the asylum situation was still perceived. According to the EC, by 2016 there had been noticeable improvements in the EU’s migration system – due to the Common European Asylum System – but there were still some prominent differences in the Member States’ type of procedures, reception conditions, recognition rates, and the type of protection granted to applicants for international protection. These differences proved to be prominent because they
caused tensions among Member States, created secondary movement, and produced uneven
distribution of responsibilities among Members. For these reasons, is that the Commission took
large measures by implementing in July 2016 the second package of legislations, which would


The objective of the proposal was “to establish a truly common procedure for international
protection which is efficient, fair, and balance” (para. 11). In this way, the proposal aimed at
increasing the harmonization and uniformity in the evaluation of asylum applications and the
procedure taken by Member States. The proposal would also help to ensure a “high quality
decision making at all stages of the procedure” (para. 13). This is important according to the
EC, because having an efficient and effective decision making process benefits both the
applicants and the Member States. It gives applicants clarity on their legal status, and it helps
MSs reduce administration and reception costs.

The Commission stated in the proposal that, a fair and efficient procedure for international
protection across the Union means:

1. “Simpler, cleaner, and shorter procedures” (para. 15). There should be a replacement
of the existent differences on the procedures applied by each MS. With this proposal,
the procedure was shortened by setting “reasonable time-limits” for an applicant to have
access to the procedure and have its application evaluated. The time-limit remained six
months, but the limit was shortened for unfounded and inadmissible reasons for application.

2. “Procedural guarantees safeguarding the rights of the applicant” (para. 16). Applicants should be informed since the beginning of the process about their rights, obligations, and consequences for not following the rules. This step ensures that asylum applications are evaluated properly and faster.

3. “Stricter rules to prevent abuse of the system” (para. 17). Setting out clearly the obligations of the applicant and the consequences of not fulfilling them. There should also be stricter consequences for not complying with the rules. This step also helps to prevent secondary movement. The proposal allows for an applicant to be removed from a MS before and after its application has been determined if the applicant abuses EU’s asylum system.

4. “Harmonized rules on safe countries” (para. 18). The proposal set a harmonized process and consequences for applying the safe countries concepts.

The aim of the proposal was to ensure an efficient evaluation for international protection by establishing a common procedure for granting and withdrawing international protection. In this way, individual Member States procedures would be replaced in order to vanish existent differences. Additionally, the proposal sets clear rules and procedures for the national authorities to use when examining the applications. At the same time, it guarantees applicants’ rights and benefits. Thus, the provisions established by the Regulation were:

1. Streamline and simplification of the procedure to grant and withdraw international protection.

2. Clear outline of the applicants’ rights and obligations.

3. Procedural assurance.

4. Procedural guarantees for unaccompanied minors and applicants with special needs.
5. Member States can now use accelerated procedure and border procedure.

6. Admission criteria for the applications (if the criteria are not met, the application should be rejected).

7. When to and how to evaluate subsequent applications.

8. Harmonization of the safe countries list.

9. Right to an effective and fair re-evaluation.

The objectives proposed by the EC could not be achieved by Member States only, thus, this Regulation was better achieved at Union level. The Regulation of this proposal, was meant to repeal and replace the Asylum Procedures Directive. This was done in order to achieve the degree of uniformity and effectiveness that the EC finds crucial for the Union. The EC stated that, adopting the proposal as a Regulation is the only measure that can guarantee a common asylum procedure.

Based on a stakeholders’ consultation mediated by the EC, the Commission analyzed and brought forward the most shared issues that coincide with this proposal. The results were exchange with the EP and these were some of the remarks from the exchange:

- Most Member States agreed with the replacement of the Directive by the Regulation. However, there were concerns from some Members about the compatibility of the proposed measures with their national systems.

- Most Member States agreed that there was a need for a “simplification and clarification of the current procedural rules” (para. 34). Consequently, they supported for more harmonization of the EU’s asylum system. There was also support for the new time-limits proposed, but many Members remarked that there needs to be special/flexible measures in case of “large influx of migrants and a disproportionate number of simultaneous applications” (para. 35).
• Member States found the accelerated, border and admissibility procedures, as necessary tools to deal effectively with “clearly fraudulent, manifestly unfounded or inadmissible” (para. 36) applications. Most Members agreed to establish a European common list of safe countries of origin, but they also wanted to maintain their national lists. They also found it necessary to include more measures that can discourage “unjustified and secondary movements”. In their view, the proposal can achieve this by providing complete information to applicants on the consequences of secondary movement.

As usual, the EC stated that the proposal respects the fundamental rights provided by the Charter. Last but not least, the proposal did not affect EU’s budget since it did not imply any burden on the Union’s financial and administrative schemes.

Proposal for standards for the reception of applications for international protection

Even though there was a Reception Conditions Directive in place for minimum harmonization of standards, reception conditions still varied greatly across Member States. This issue, together with the migration crisis, made it visible that there was a need to ensure more consistency in the reception systems of MSs, and to have better preparation in case of an emergency situation. Therefore, the proposal was created to set standards for the reception of international protection applicants. The proposal had three goals:

1. To increase harmonization of the reception conditions across the EU. This would guarantee firstly, that applicants get dignified treatment and their rights are protected. Second, it guarantees a decrease of irregular movement due to applicants search for

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MSs with better reception conditions. Third, it would help to achieve a fairer
distribution of applicants among MSs.

2. Decrease secondary movement. Having applicants better monitored – through the
implementation of stricter restrictions of free movement and its consequences – allows
for the Dublin Regulation to be followed.

3. Increase the applicant’s self-reliance and integration system. Applicants should be
allowed to work and earn their own money as soon as possible. This should be the case
even if their applications have not been processed yet. Once the applicant lodges its
application, the period to be allowed to work should not be longer than six months. This
will help them be more independent and start integrating in the society. Additionally,
this measure also reduces reception costs. Applicants whose applications will most
likely be rejected, do not receive this benefit.

The proposal emphasized the obligation that Members have to follow EU’s standards for
monitoring and controlling their reception systems as developed by EASO. Furthermore, some
of the more prevalent rights for applicants highlighted in the proposal were: under all
circumstances applicants should have the right to access healthcare; reception conditions for
minors should be adapted; applicants who have access to the labor market should not be
discriminated, they should be treated as nationals; once a decision has been taken about an
application, the applicant must be informed of the results (decision, reason, and how it can be
challenged) in a language that he/she understands; detention should always be the last resort,
and it should be granted on the basis of individual assessment of cases.

The proposal presented the following changes to the existing Reception Conditions Directive:

- The definition of the term “family members” was extended. This now includes family
relations that were created after leaving their country of origin, but before arriving to the
EU.
• Member States have the obligation to create and update regularly contingency plans to be implemented in the case of large number of applications.

• Stricter time-limits to provide unaccompanied minors a guardian; according to the proposal this should be done now in less than five working days after the application was made.

After consulting with Member States and other relevant stakeholders, and analyzing their input, the EC stated the following outcomes:

• Most Member States were in favor of increasing harmonization of reception conditions in the EU.

• Member States agreed to have more harmonized measures to prevent secondary movement. Such measures are more restrictions of the applicants’ freedom of movement. Many Members agreed that what is provided regarding “material reception conditions” should be adapted according to where (which MS) the applicant is staying. There was disagreement among Members of whether material reception conditions should be provided only as commodities and services, or also financial help.

• Most Member States agreed to increase applicants’ chances of integration through the access to the labor market.

• Considering that most Member States do not provide financial support to applicants, the EC cannot create a standard EU mechanism to determine this support.

Due to the large differences of social and economic conditions of Member States, the EC did not consider “feasible or desirable to fully harmonize Member States reception conditions” (para. 35). Lastly, the proposal did not affect EU’ budget.

Proposal for a standard qualification for asylum\textsuperscript{14}

\textsuperscript{14} Ibid.
This proposal was created to compliment the previous proposals. While the others aimed to standardize across the EU the procedure for international protection and reception conditions, this proposal aimed to standardize the qualification for asylum. In order to accomplish this, the EC outlined five objectives:

1. Change optional rules for more rigid ones in order to further harmonize the criteria for the qualification of international protection.

2. Oblige authorities of Member States to take into consideration “common analysis and guidance on the situation in the country of origin” (para. 17) when evaluating asylum applications.

3. Oblige Member States to do regular reviews on the situation of the countries of origin and adapt their application decisions accordingly. By doing this, a MS can ensure that protection is provided only to those who face persecution or are still under serious harm. If the protection status is ended, the person has three months before the decision takes effect. In this way, the person has enough time to apply for another legal status.

4. To prevent secondary movement, there should be more clarification on the applicant’s obligations to stay in a determined MS. Consequently, if a beneficiary of international protection is found in another MS, his/her calculation to apply for legal residence (five years in total) will be restarted.

5. More harmonization of applicants’ rights.

The proposal sought to ensure that all Member States have and follow a “common criteria for the qualification of persons genuinely in need of international protection”, and that all Members equally have standards for the applicants’ rights. The proposal follows the provisions stated by the Geneva Convention of 1951 and the Protocol relating to the status of refugees from 1967 (explained in Chapter one of this thesis).
The EC explained in the document that, considering that all the issues mentioned in this proposal were directly related to the Common European Asylum System, Member States alone could not meet the objectives, meaning that it was a case better handled at EU level. However, the EC stated that MS can still apply their own national law. Members can also, still grant national humanitarian status to applicants who do not meet the criteria set by the Regulation and they can implement their national measures that go beyond the Regulation, only as long as these do not undermine the provisions established by this Regulation. Similarly, this proposal brought once again emphasis to the importance of the Dublin Regulation, because as explained by the EC, the harmonization of the criteria for qualification of international protection brings more uniformity to the Common European Asylum System, which consequently benefits a more sustainable and fair system to determine which MS is responsible for the application. Another important criterion set by the Regulation for the qualification of international protection, is that if the applicant can travel safely and legally, and can be admitted and “reasonably” settle in another part of his/her country of origin, then this applicant cannot be categorized as in need of international protections. Thus, the Regulation gives way to internal protection.

Therefore, with this proposal, the Commission proposed to recast the Qualification Directive with a Regulation. This means that all provisions for asylum application that were optional would be changed to obligatory rules, further clarification of the term international protection and its content was established, and new rules were set to prevent secondary movement.

As it was the case with previous proposals of this legislative package from July 2016, Member States and other relevant stakeholders were consulted. Considering that Member States, although being part of the EU, still hold a great degree of authority and can affect the implementation of the proposals, it is relevant to include their opinions for the analysis of this thesis:
• The majority of Member States supported the EC on harmonization for higher recognition rates and the type of protection that is granted by MSs. To achieve this, they emphasized practical cooperation and guidelines from the European Union Agency for Asylum.

• Member States mostly supported the Commission’s proposal to have reviews of the applications, as long as the information to review the application is coming from EU level agencies. Some MSs did not fully agree with this idea because they argued that it would increase their administrative costs.

• Generally, there was support by Member States to harmonized the duration of the permits. However, MSs were divided on the importance of informing beneficiaries their possibility to apply for other residence permits once their protection status expires. They also disagreed about how much should beneficiaries be encouraged to be part of integration programs considering that international protection is only temporary.

Proposal for establishing a Union Resettlement Framework

This proposal was created to establish a Union Resettlement Framework, in order to set a common Union policy for resettlement and increase harmonization in the procedure; this would help reduce existent differences in the resettlement procedures of Member States. According to the Commission, this framework would make EU’s system stronger and more capable of achieving its regional and global objectives. The aims of the proposal were: to establish a common approach to generate safe and legal channels for the arrival in the EU of persons in need of international protection; to reduce Members pressure on their asylum systems which

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have been caused by the sudden inflow of migrants; to share responsibility with third countries that have a large population of asylum seekers; to contribute to the global resettlement effort with one common Union action.

For a person to be resettled in the EU, he/she must first be granted international protection. As it is the case with persons who apply for international protection in MSs, resettled persons’ data should be store in EURODAC by the responsible MS. This is done in order to monitor secondary movement. Additionally, Members can request the assistance of the European Union Agency for Asylum to coordinate technical cooperation and participate on sharing infrastructure. Specially in this proposal, the EC emphasized the importance of cooperating technically and financially with third-countries. These partnerships should be based on coordinated acts of the Union and its Member States. The Commission stated that this proposal demonstrated the commitment of the EU to help countries that have been highly affected by the migration crisis, and its commitment to prevent people to continue taking dangerous journeys to reach the EU.

Considering that the proposal actions called for a Union Resettlement Framework and the scale and effects are beyond individual Member States capabilities, it was an issue that could be better achieved at Union level. At the same time, the EC proposed for this action to be a Regulation because it is an instrument that creates more uniformity in the procedure for resettlement, and it helps to decrease discrepancies in Members actions. Nonetheless, the Regulation protects the rights established by the Charter, especially, the right to asylum and protection from refoulement. The Regulation also entitles Member States to EUR 10,000 per resettled person, funding that would come from the Asylum Migration and Integration Fund (AMIF).

Thus, the main provisions established by this proposal with the Union Resettlement Framework are the following:
1. Resettlement of third country nationals in need of protection to a MS.

2. The Commission and the Council are the bodies in charge for deciding which regions or third countries would be taken into consideration for resettlement.

3. The legislative proposal sets the criteria for the qualification and exclusion for international protection. Member States should exclude applicants who do not meet the eligible criteria.

4. There are two procedures for resettling according to the new Framework:
   a. Ordinary procedure, which follows the resettlement standards that Member States practice.
   b. Expedited procedure, which will be used on emergency situations and follows the operating procedures of the EU-Turkey Statement. This procedure is characterized by its rapid admission mechanism.

5. The resettlement framework would be triggered under specific situations; therefore, it does not set a fixed number of people to resettle, neither does it establish the third countries or regions from which resettlement occurs. These are variables adapted to the situation faced at the moment.

6. Cooperation with relevant stakeholders is crucial, especially with third countries and the UNHCR. Additionally, Member States also get technical and operational support from the European Union Agency for Asylum.

4.1.5 Proposal from October 2016

When looking at the curve of 2016 from the Eurostat chart, it is possible to observe that August was the month with the most asylum applications in that year. As explained in previous sections of this thesis, the number of arrivals decreased exponentially from 2015 to 2016. The highest month of 2015 surpassed the 160,00 applications, while the highest month of 2016 had around
130,000 applications. Considering that there were no proposals from the Commission in August 2016, the proposal from October was analyzed instead. As it will be described below – regardless the fact that number of asylum seekers arriving to the region had decreased – this proposal was created to prolong the temporary internal border controls that some Schengen States placed.

Proposal for prolonging temporary internal borders\(^\text{16}\)

In May 2016 the Council adopted a Decision, which set a Recommendation for “temporary internal border control in exceptional circumstances” due to the actions that were putting the Schengen area at risk. This Decision was the first measure that triggered Article 29 of the Schengen Borders Code, which is the article that sets conditions and procedures for closing temporarily internal borders. The Recommendation was drawn for five Schengen States (Austria, Germany, Denmark, Sweden, and Norway), and it specified the number of borders and their sections to be affected. The five Schengen States accepted and implemented the Recommendation. However, after five months, these five States wrote again to the Commission asking for the prolongation of the Decision from May 2016 due to the critical migration situation they were still facing. Although the number of asylum applications had decreased from 2015 to 2016, the total number of asylum seekers these Schengen States were receiving, were still critical according to the Commission. This is why, the proposal suggested to prolong the Decision adopted by the Council in May 2016.

By the time this proposal was drawn, the EU-Turkey deal was in place and giving – as stated by the EC – good results because it was helping reduce the amount of applications in the region.

However, there was still an average of 107 arrivals per day in the Greek islands, which is an amount that still causes problems according to the explanations provided by the five affected Members addressed in this proposal. The reason is because many of the migrants arriving to the Greek islands would continue their journey to other Member States, hence, causing secondary movement. According to the Commission, this is an exceptional situation “that constitutes a serious threat to public policy and internal security and put at the risk of functioning of the whole Schengen area” (para. 14).

Due to these persistent issues, lifting internal border controls and reestablishing the normal functioning of the Schengen area was not possible. Therefore, the EC explained that it was justified to prolong internal border controls as requested by the five Schengen States for a period no longer than three months. But, to implement these border controls, the addressed Schengen States had to follow strict provisions:

1. Implementing internal border controls, should be the last resort after the MS has evaluated all the other possible options that are less restrictive for cross-border traffic and asserts that they do not address the problem effectively.

2. Schengen States should include the evaluation of these options in their “notification on the maintenance of internal border controls”, which had to be deliver to other Members, the EP and the EC.

The implementation of temporary border controls, had to be strictly adapted accordingly to the Schengen States’ needs and response “to the serious threat and to safeguard public policy and internal security” (para. 20). Additionally, Schengen States had to give a detailed report to the EC about the outcomes and assessment of their border controls, and if applicable, include their need to continue with the Recommendation. Important to remark, is that this proposal did not affect EU’s budget.
Last but not least, through this proposal, the Commission insisted that the full application of the Dublin System had to be gradually restored, “with the full participation of Greece” as well. Furthermore, the emergency relocation quotas set since the year before (September 2015) should still be fulfilled and that should provide further help to alleviate the situation. Also, the return of persons who do not have the right to stay in the EU still had to be improve.

4.1.6 Proposal from January 2017

With a total that was just below the 60,000 mark, December 2016 had the lowest number of applications for asylum not only for that year but also compared to the previous year (2015). Unlike in 2015, when the Commission took strong measurements with its package of proposals, there were no proposals in December 2016. Therefore, the proposal from the following month is analyzed – January 2017.

Proposal for a Recommendation for prolonging temporary internal border control

The proposal follows up on previous Recommendations enforced in 2016 for the temporary internal borders control of five affected Schengen States (Austria, Germany, Denmark, Sweden, and Norway). At the time this proposal was drawn, Berlin had recently suffered a terrorist attack, and considering that it was not the only terrorist attack in the region that year, the Commission found it crucial to evaluate EU’s security policies that were in place. The EC considers that to ensure “full security in the Schengen area” (para. 9), there must be an increased and effective cooperation between Member States’ relevant bodies (e.g. Police, intelligence, EU databases, etc.). Thus, as the terrorist attacks have demonstrated, reintroducing

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internal border controls and carrying individual police checks does not guarantee security of a MS nor the region.

According to the EC, “the external borders of the EU are today better protected and equipped to react to a new crisis due to the newly established European Border and Coast Guard” (para. 10). Nonetheless, the EC is also aware that migratory inflows to the Region, can still “pose a serious threat to public policy or internal security in one or several Member States” (para. 11). This in addition to the security challenges the Union was facing, made the Commission reevaluate EU’s legal framework to determine whether it can deal with the present issues or if it should be modified.

In this proposal, the EC formulated a new Recommendation to prolong once again the temporary internal border control of the five affected Schengen States. There were three reasons for taking this decision. First, according to the reports submitted to the EC by the five Schengen States, the controls followed all the conditions established by previous Recommendations. Second, border controls – as reported by the five Schengen States – did help to stabilize the critical situation. Third, although the number of asylum seekers arrivals decreased in 2016, the average of arrivals to the Greek islands was still alarming for the EU. Similarly, there was still around 60,000 asylum seekers and irregular migrants in Greece at the time, which perpetuated the overcrowded situation of camps in Greece and encouraged secondary movement; and the situation in the Western Balkans was also critical. All these issues together simply continued making it visible that there was “a serious threat to public policy and internal security [, which puts] … at risk the functioning of the whole Schengen area” (para. 16).

The Recommendation established with this proposal, would only be valid for three-month period and the addressed Schengen States must follow the strict rules for implementing border control, stick to the border sections established, and report monthly on their situation. This
proposal had no effect on EU’s budget. Last but not least, the Commission also claimed that, starting from mid-March 2017, the full Dublin system will be introduced gradually once again in Greece.

4.2 The results of the proposals

4.2.1 Results of the relocations and resettlement quotas

As previously explained, according to the legislative proposals, Members States had the obligation to relocate 160,000 persons in need of protection from Italy and Greece in a two-year period. The Council adopted this Decision with a qualified majority, but it was not a smooth process. Not only Slovakia, Hungary, Czech Republic, and Romania voted against this Decision in the Council, Slovakia and Hungary took a step further by bringing the case to the Court of Justice of European Union. However, the Court turned down this objection and the Decision remained active.

Over a year later after its implementation, by December 6\textsuperscript{th} 2016, the total of relocations was as low as 8,162 (European Commission, 2016b). There were four Member States who did not take any asylum seekers for relocation, them being Austria, Denmark, Hungary, and Poland. Czech Republic, Bulgaria, Croatia, and Slovakia were among the lowest rates of relocation (Boffey, 2017); and according to the report by the European Commission (2016b), the Member that relocated the most persons was France, followed by the Netherlands, Finland, Portugal, and Germany. Although the numbers were low and critical, three months later (March 2017) Member States did not improve their responses and they had only carried out 8\% of the total of relocations established in September 2015 by the Commission (Boffey, 2017). Malta and Finland were the only MSs that met their fixed relocation quota.
When looking at the numbers, and the geographical location of Member States, it is possible to observe that those Members who did not commit to any relocation or had done very little, are also the Members closer to Greece, Italy, and Turkey; meaning that secondary movement affects them directly more than it does to other Member States. Overall, regardless of the reasons Member States had, the relocation scheme proposed by the Commission was not a success when looking at the amount of relocations that have taken place. Resettlement, on the other hand, had better results. From the fixed scheme of 22,000, 13,887 people were resettled across all Member States (European Commission, 2016b). That is more than 60% of the set goal. The Commission stated that the main reason for this accomplishment was the EU-Turkey Statement. This Statement was a joint action plan between the two parties, which allowed for the return of irregular migrants. All irregular migrants who arrived to the Greek islands would be returned to Turkey if they did not apply for asylum or if their application was rejected. But, for every Syrian returned to Turkey, the EU would take in for resettlement another Syrian.

The first relocation scheme that was analyzed in this section (proposal from May 2015), added an additional cost of EUR 240 million to the EU budget; while the Recommendation for resettlement from the same legislative package did not specify budgetary implications. For the relocation scheme that was established in September 2015, the EC did not specify in its proposal the costs for the activation of this mechanism; instead, it was a matter to be decided according to specific circumstances of the Member States. The Union Resettlement Framework, part of the proposal from July 2016 and proposed to be adopted as a Regulation, established that Member States are entitled to receive EUR 10,000 per resettled person, these funds come from the AMIF (the legal stance of this Union Resettlement Framework is further discussed below).

If the budgetary implications of these two mechanisms (resettlement and relocation) are taken into consideration, as described in their proposals, it is possible to observe that their costs were
not always stated clearly. By looking at the only sums provided by the EC in the proposals, one could say that they roughly had the same budgets. However, if the success of resettlement was, as the Commission said, because of the EU-Turkey Statement, then there was a much larger budget implication for resettlement. In March 2016, Members gave the approval to give three billion euros to Turkey, from which two billion came from MS and the other billion from the EC (Barigazzi, 2016).

4.2.2 Adoption of a list of safe countries

There have been different efforts by the Commission to create a common list of safe countries. The first time it was mentioned since the migration crisis started, was in the European Agenda for Migration in May 2015 (Guillaume, 2017). It was later proposed to be adopted as a Regulation in September 2015, and with no implications to the EU budget, Member States agreed easily on giving way to the list (Frelick, Dispatches: EU ‘Safe Country’ Lists Threaten Asylum Seekers’ Rights, 2015b). However, although there has been an agreement to establish such a list – which shall replace all national lists by 2019 (European Parliament, 2016) – the negotiations have been suspended by the Council due to lack of agreement between the EP and the Council on which countries should be on the list (Guillaume, 2017).

4.2.3 European travel document for the return of third-country nationals

When taken to the EP, the Regulation to establish a European travel document for the return of third-country nationals was passed with an approval of 75.3% (Vote Watch Europe, 2016a). The majority of Member States had a cohesion of votes higher than 60%, and six Members voted fully for the Regulation (Bulgaria, Czech Republic, Malta, Romania, Slovakia, and Slovenia). Among the MSs with lowest approval for the regulation were Denmark, France, and Greece. No MS had a majority of MEPs voting against the regulation, meaning that overall
there was a strong agreement for the Regulation. Additionally, this Regulation replaced the Council Recommendation from November 1994, which was the policy in place to provide a standard travel document to third-country nationals; hence, the Regulation became the new norm. Lastly, as mentioned before, this proposal did not have any impact on EU’s budget.

4.2.4 Implementation of the European Border and Coast Guard
The Regulation to set a European Border and Coast Guard was passed in the EP with a 68% approval (Vote Watch Europe, 2016b). The majority of Member States had a cohesion of votes higher than 50%, and five Members voted fully for the Regulation (Bulgaria, Estonia, Luxembourg, Malta, and Slovakia). Among the MSs with lowest approval for the regulation were Denmark, France, and Greece. No MS had a majority of MEPs voting against the regulation, meaning that overall there was a strong agreement for the Regulation. Out of all the proposals evaluated, this was the one with the highest budgetary implication. Although it was not specified in the proposal what was the exact cost, it was stated by the Commission that the existing budget for this type of mechanisms and operations was tripled under the Regulation. The Regulation is part of Frontex, which is one of the most expensive mechanisms in the EU.

4.2.5 Reinforcement of checks
The Regulation for the reinforcement of checks against relevant databases at external borders, passed the EP voting with a 74% approval (Vote Watch Europe, 2017). The majority of Member States had a cohesion of votes higher than 50%, and six Members voted fully for the Regulation (Bulgaria, Croatia, Czech Republic, Luxembourg, Malta, and Slovakia). Among the MSs with lowest approval for the regulation were Austria, France, and Greece. No MS had a majority of MEPs voting against the regulation, meaning that overall there was a strong agreement for the Regulation. This proposal did not have an effect on EU’s budget.
4.2.6 Prolonging temporary internal borders control

In the proposals analyzed, the Commission prolonged two times the Decision of implementing temporary internal border controls in five Schengen States (Austria, Germany, Denmark, Sweden, and Norway). In the proposals, the EC clearly stated that these States could implement temporary border control, only after demonstrating that other measures were not enough and this was their last resort to manage the migration crisis. All five States provided enough evidence, according to the EC, and continued prolonging internal borders controls. However, MSs Greece and Slovenia complained about the Commission’s Decision (Statewatch, 2016).

In its complained, Greece formulated that this Decision was based on the assumption that they were not dealing well enough with the migration crisis and disagreed by stating that they have been working closely with the EU and its relevant agencies to react efficiently. Slovenia, on the other hand, taking in consideration EU’s principle of proportionality, complained about the Decision not being fair. Between October 2015 and March 2016 Slovenia had a total of 477,791 migrants (IOM, 2017b). While the majority of these migrants sought to continue their journey to other EU countries, the situation still destabilized the country due to Austria’s border controls and the reaction of other neighboring countries, such as Croatia (Rankin, 2016).

Despite the fact that France was not addressed in the Commission’s proposals, this was another MS that closed its borders. This measure was part of its reaction to securitize the state after the terrorist attacks it suffered in November 2015 (Traynor, 2016). Croatia, Hungary, Slovakia, the Czech Republic, and Poland were among other Member States that also had reactions that implemented some sort of control of their borders, such as use of their national troops, police checks, limits on the number of migrants allowed to enter the country per day, etc. (Rankin, 2016; Traynor, 2016).
Thus, although the Decisions to prolong internal border controls were only referred to five Schengen States, there was a chain of reactions that occurred in other Member States regardless of the rules established by the Schengen Borders Code. According to the EC proposals, the implementation of border controls in the five addressed States, did help to mitigate the crisis in these states. But, looking at the reactions, the proposal certainly did not decrease the tensions among Member States and their will to take measures that go beyond the rules established by the EU (Tomkiw, 2015).

4.2.7 From Directives to Regulations

The proposal to replace Asylum Procedures Directive with a Regulation, has been taken to the European Parliament; however, it did not receive yet a Committee decision. This means that the proposal has not moved forward since it was drawn in July 2016 (Ferrara, 2017). According to the steps of the process for policy-making, after the EC sets a proposal, it is send to the EP. The EP then assigns a Committee to revise and make the necessary changes. Once the Committee reaches an agreement, then the proposal can move forward to voting in the EP. Therefore, if the EP has not assigned yet a Committee to evaluate the proposal, it means that the proposal has not move forward in the process to be voted for or against to be adopted as a Regulation.

The proposal to replace the Reception Conditions Directive for a Regulation, has moved further than that for a common procedure for international protection. It received approval by the Committee with certain reforms on provisions regarding quick access to the labor market, measures taken for those who leave the assigned MS, the protection of minors, etc. But, it did not go through EP voting yet either (in ’t Veld, 2017).
The proposal to replace the Qualification Directive with a Regulation is still under examination and like the other proposals from this legislative package of July 2016, it has not passed enough steps to make it to the EP voting (Fajon, 2017).

4.2.8 Union Resettlement Framework

The Union Resettlement Framework has not reached yet EP voting. However, the Committee in charge of evaluating the proposal, has already submitted a report containing their decisions and changes in order to start the interinstitutional negotiation process, and then after proceed to the EP (Björk, 2017). Among the changes made to the proposal, is an increase in the number of persons to be resettled. Although the EC did not state a fixed number, the new report states that it should be 20% of the “annual projected global resettlement needs”, which is defined by the UNHCR. Another important change regards the financial compensation that Member States receive. According to the report, only Member States that follow the EU resettlement framework will receive EUR 10,000; should they follow their own national resettlement programs, then they will receive EUR 6,000 instead. The position that Member States have regarding this new framework cannot be known until it goes to vote.
Chapter 5: Analysis

The migration crisis in 2015 and 2016 posed a challenge for the European Union and its Member States. As a consequence, the European Commission has been taking actions to tackle the situation. After analyzing the selected proposal packages, it is possible to answer in detailed the two research questions presented in the introduction.

5.1 Research question 1: Why the European Union has not been able to agree on a common asylum policy?

The majority of the measures implemented to deal with the migration crisis “have been focused on externalizing the problem” (Katz, 2017, p. 310). Considering that the EU is composed of sovereign States, externalization of the problem – according to Katz (2017) – at EU level means to transfer the responsibilities of migration processes to another party, which in this case can be Member States. In fact, Katz argues that, although the relocation schemes established by the EC were an attempted to internalize the problem, this was not feasible. It was a process that only imposed fixed quotas of asylum seekers to Member States, but it did not provide them with a system that could help them assimilate in their cultures these new incomers, and it did not even provide them with a unified system for reviewing the applications and the criteria for the qualification of international protection. This is important to consider because is one of the reasons that answer the first research question, “why the European Union has not been able to agree on a common asylum policy?” If the EU externalizes the issue by transferring the responsibility to MSs, then it is not focusing on creating ‘common asylum policies’, it is just delegating the issue to other parties. Similarly, a lack of a harmonized system across the Union
to deal with applications of asylum seekers and their reception also makes it more difficult for MSs to agree on a common asylum policy. This is because some MSs might refuse to raise their standards for dealing with this issue, while others might refuse to lower their standards. Therefore, for the EU to be able to agree on a common asylum policy, it must first assume the responsibility, seek for solutions that not only leave the burden to MSs, and it should push further to create a harmonized asylum across the Union.

Referring back to the relocation schemes, considering that only 8% of the goal was accomplished, it can be said that there was mostly a rejection from Members for such a strategy. Another sign of rejection is the fact that four MSs (Austria, Denmark, Hungary, and Poland) did not take any responsibility from their relocation quota, and two MSs (Hungary and Slovakia) brought the case to the Court of Justice of the European Union. These reactions further demonstrate that both the EU and its Member States have mainly been focusing on externalizing the crisis, rather than offering sustainable solutions to deal with the continuous inflow of migrants.

Similarly, when the EC prolonged the Decision for temporary border controls in Austria, Germany, Denmark, Sweden, and Norway, some Member States disagreed and some saw it as an opportunity to start taking their own measures –once again, externalizing the issue. As explained in previous chapters, Member States can place border controls if their security is being threaten. However, to enforce this, there are certain provisions that must be followed according to the Schengen Borders Code and there has to be approval at EU level to do so. But, Members, such as Slovenia and Hungary for example, went beyond EU’s regulations and imposed some sort of control in their borders. France was another MS that imposed border controls as a security measure, but this reaction was more accepted by the EU because of the terrorist attacks the state had faced. Thus, when the EC proposals were for the benefit of
specific Member States (e.g. Italy, Greece, Sweden), in order to decrease the pressure that derived from the migration crisis, there was an increase of tension in the Union.

By far, Dublin Regulation is one of the most (if not the most) debatable EU mechanism in place. In September 2015, under its crisis relocation mechanism, the EC emphasized the importance of ensuring proper application of the Dublin Regulation and that the relocation mechanism was a measure to achieve this. Regardless the fact that the migration inflow was at a historical level that year, the Commission insisted on the importance of maintaining and enhancing the system. As the crisis persisted, the European Commission recognized later on that the sudden inflow of asylum seekers and irregular migrants the region was facing, made visible the design and implementation weaknesses of the Dublin Regulation and that there is a need to modify them (ECRE, 2016). In fact, one of the main criticisms is that the system is unfair because it places more pressure on bordering states, rather than distributing fairly the burden of asylum applications (Fratzke, 2015). Even though the Dublin Regulation had a recast in 2013 and Dublin III Regulation was adopted, its main weaknesses still remain unsolved, that being Member States differences in their asylum procedures, reception conditions, and qualification criteria (Fratzke, 2015). The Commission is aware of these discrepancies, which is why there was a proposals package (July 2016) that was mainly drawn to address these issues. Nonetheless, after being presented over a year ago, these have not move much forward (as mentioned before). Even though, the Commission recognized the weaknesses of the system, it continued emphasizing the importance of maintaining and applying the Dublin Regulation. Some of the proposals analyzed, clearly state the obligation Member States have to inform migrants of their rights and obligations, and this information must include an explanation of the Dublin System. Additionally, even though the relocation scheme did not even reach half of its goal and migrants continued arriving to the EU shores, in its latest proposal analyzed in this
thesis, the Commission insisted that the Dublin Regulation should be reestablished gradually back in Greece. Hence, proving the importance the EC gives to the Dublin mechanism. The weaknesses of the Dublin Regulation and the lack of establishing needed reforms, provides support to the answer of the first research question. Continuation of the Dublin system makes it harder to agree on a common asylum policy because it benefits some MSs more than others, and, once again, this only increases tensions in the region.

5.1.1 Internal political debate within Member States between 2015 and 2016

The continuation of the Dublin Regulation and the proposals presented by the EC had some important gaps that made it difficult for MSs to fully accept the measures and implement them. While the majority of MSs did not comply with these measures, some MSs reacted more defying than others. So, why did some MSs have a stronger stance on the Commission’s proposals? One way to answer this question, is to look individually at the political events that took place in these States.

Why did Austria not take any asylum applicants from the relocation quota although they implemented border control?

In November 2015, Austria made its asylum policies stricter for Afghans. As discussed in the first chapter, not only Afghanistan is one of the main countries of origin, this decision by the Austrian authorities was also done at the time when the Taliban had increased their attacks. According to the new law, family members would have to wait for three years instead of one to apply for family reunion. Additionally, the family member who is in Austria must prove to have an “independent source of income, health insurance and accommodation” (Tran & agencies, 2015), in order to bring his/her family members to the country. At the same time, Austria announced its plans to control the inflow of migrants by imposing fences in their border
with Slovenia. The control of its borders in 2015 was a measure that was not aligned with EU’s regulations, but in 2016 the EC and the Council approved this under their Decision for temporary internal border control in exceptional circumstances. Moreover, in December 2016, the government proposed for a law that would jail and fine asylum seekers who lied about their nationalities (Dearden, 2016). Syrians had a bigger chance on getting international protection in Austria than third-country nationals from other countries (e.g. Afghanistan). Therefore, some asylum seekers lied about their origins, in order to increase their chances to stay in the region.

These measures by the Austrian government are supported by the anti-immigration sentiment that has been growing in Austria, which showed especially after the events from the migration crisis in 2015 (Isenson, 2017) and the presidential elections when the Freedom party (FPÖ) leader Norbert Hofer was close to winning multiple times. The FPÖ is a right-wing political party that is Eurosceptic, anti-Muslim, and anti-immigration. An increase in the party’s popularity implies that there is an increase of anti-immigration sentiment in Austria, and consequently asylum policies turn more restrictive and less cooperative with the EU.

**Why did Hungary not take any asylum seeker applicants from the relocation quota?**

To prevent the inflow of asylum seekers into the country, Hungary closed its border with Serbia in September 2015 and it started building fences with the borders with Croatia and Romania. It also used pepper spray, water cannons and teargas to disperse the migrants that were at the borders (Kingsley, 2015b). Hungary has one of the lowest rates for granting asylum and it is one of the few states in the EU that detained a large number of asylum seekers (Pardavi & Gyulai, 2015). Additionally, it made changes in its legislation to allow for the fast rejection of the majority of the asylum applications it receives, and its reception centers are overcrowded, lack basic services and have a low hygiene standard. These harsh measures have been taken by
the Hungarian authorities, despite the fact that Hungary is a country of transit for asylum seekers who mainly en route to Western European countries (Juhász, Hunyadi & Zgut, 2015). Based on Eurobarometer figures from 2015, Juhász et al. (2015), explained that in May 2015 the main concerned for Hungarians was unemployment and that only 13% of the respondents considered immigration in their top three most important problems. However, there was a radical shift by September of the same year, when the percentage went from 13% to 65%. Similarly fear for terrorism jumped from 5% in May to 29% in September. In addition to the public’s fears, the government – ruled by the national conservative and right-wing populist party Fidesz – was also taking part in xenophobic, anti-immigration, and radical discourse. Authorities perpetuated the fear by portraying the migration crisis as an economic burden and a terrorist threat (Juhász, Hunyadi & Zgut, 2015). The rapid increase of anti-immigration sentiments in Hungary offers a good insight for the Member’s choice of not supporting the Commission’s relocation scheme.

**Why did Denmark not take any asylum seeker applicants from the relocation quota?**

Due to the migration crisis, Denmark also made changes to its asylum policies. Some of the changes were: reduce the amount of financial help that asylum seekers receive; increase from one year to three years the waiting period to apply for family reunion; confiscation of asylum seekers’ assets and valuables to cover for their housing and support expenses; shortening residence permit period from five years to three (Hofverberg, 2016). The changes have been designed to not only prevent the entrance of asylum seekers, but also to make the country a less appealing destination (Martin, 2016). Additionally, Denmark implemented temporary border control in the border with Germany. This was a response after Sweden imposed temporary border control (Hofverberg, 2016).
In September 2015, the prime minister stated that Denmark should no longer attempt to “change the world” based on ideas of democracy and human rights, but it should be merely concerned on its national interests and the wellbeing of its citizens (Gammeltoft-Hansen & Malmvig, 2016). Since the Second World War, Denmark was a pioneer on providing humanitarian aid to those that need it. In fact, Denmark was one of the parties involved in the drafting of the 1951 Refugee Convention and the first country to ratify it. But in December 2015 the prime minister indicated that this Treaty needs to be reevaluated (Gammeltoft-Hansen & Malmvig, 2016). Danish People’s Party (DPP) is the second largest political party in Denmark since 2015 and is right-wing. As its support rises, so does the public’s support for anti-immigration policies, which increased from 17% in September 2015 to 37% in January 2016 (Delman, 2016); that is a 20% increase in only four months. Additionally, 70% of the respondents expressed that the refugee crisis is the most important topic in the political agenda. The shift in raison d’être from humanitarian to pure national interest, which goes in hand with the rise of the right-wing DPP party and the public’s preferences for anti-immigration policies, are reasons for Denmark’s defiant responses towards the EC’s solutions.

Why Poland did not take any asylum seeker applicants from the relocation quota?

In the 2015 elections, the right-wing Law and Justice (PiS) party won “with more than a third of the vote” (Smith, 2015) in Poland. This gave the party and its leader, Jarosław Kaczyński, the right to rule alone. After winning the elections, Kaczyński retracted from the previous Polish leader’s promise to take in asylum seekers, and stated that Muslims could be a problem for the homogeneous society of the country and a security threat (Cienski, 2017). Kaczyński opposed not only to the relocation schemes presented by the EC, but also to the financial compensation MSs should give if they do not take in their share of asylum seekers, claiming that this decision diminishes the sovereignty of the “weaker” EU Members (Broomfield, 2016).
But his anti-immigration and anti-Muslim rhetoric is supported by the “three quarters of Poles [who] are against accepting refugees from Africa and the Middle East”, as shown in an opinion poll (Cienski, 2017). Besides the security fears based on the terrorist attacks that took place in Europe in 2015, Poles also neglect asylum seekers because of economic fears (Bachman, 2016).

**Why did Slovakia oppose to the relocation quota? And, what is the significance of Slovakia’s parliamentary elections?**

Slovakia had parliamentary elections in March 2016, an election that was especially important for the EU because the country would take the presidency of the Council of the European Union in the same year (Cunningham, 2016). The center-left Direction Social Democracy (Smer-SD) was the winning party. But its support decreased, despite the leader’s strategy of using an anti-immigration rhetoric to gain more support. For the first time the neo-Nazi People’s Party Our Slovakia (LSNS) entered the Slovak parliament, and the far-right Slovak National Party (SNS) also won seats in the parliament. The results of the election show the increasing sentiment of anti-immigration in Slovakia, and this is in addition to the fact that 89% of Slovaks are against EU’s asylum relocation schemes (Cunningham, 2016).

As a result, Slovakia has preventive and discriminatory asylum policies. In 2015 an estimate of 1,058 people were detained, families with children are part of this figure. The detentions were generally given with no explanations and for long periods (Global Detention Project and GDP, 2016). Slovakia took in only 200 Syrian asylum seekers in 2015 and they would only be accepted if they were Christians (Števulová, 2015).

Through its proposals, the Commission attempted to bring solutions to the migration crisis based on fairness and solidarity, a goal that might turn problematic at EU level if the president of the Council based its campaign on an anti-immigration rhetoric and citizens.
Why France has a low acceptance of regulations that prevent the entrance or expel migrants?

France’s asylum values date back to 1793 during the drafting of its Constitution after the French Revolution (Boring, 2016). Its asylum laws are based on international and European law. France offers two types of asylum protection: refugee and subsidiary protection. For both cases, asylum seekers have the right to work, bring their family (spouse and children), obtain from the French authorities a travel document, and enjoy similar social rights as French citizens. Additionally, they have the obligation to participate in civic programs and, if necessary, take language courses. However, there is one important difference between the two types of protection, those who obtain refugee protection can apply for the French naturalization immediately; while those who are granted subsidiary protection receive a residence permit for a year, which can then be renewed for a two-year period (Boring, 2016).

Nonetheless, despite the benefits granted under the French asylum protection, many asylum seekers avoided France in 2015 because it lacked accommodation and their process to review an application was lengthy (Renevier, 2015). Moreover, in the summer of the same year, migrants were expelled from three informal camps, while other facilities remained overcrowded. Later in October 2015, the government made reforms to its asylum system in order to make it more efficient for processing the applications and to create more places in the reception centers (RFI, 2015).

But after the terrorist attacks that the nation suffered, the government started to present mixed procedures that would encourage migrants to leave the country but also “protected” the refugees (Bulman, 2016). Such is the case in November 2016, when authorities offered a compensation on 2,500 EUR for those who voluntarily deported themselves. The government defended this measure, claiming that this would open more space for those who are truly in
need of protection. However, this would not compensate for the lack of accommodation and the closing of the camp Calais only aggravated the situation (Bulman, 2016).

Taking this information, it can be said that the reason behind France’s low acceptance for regulations that prevent the arrival or expel of migrants is because it has a system for dealing with asylum that is well founded in its Constitution, which in addition states the obligation that the country has to provide asylum for those in need of protection. Under its asylum policies France also has a system for providing a travel document to migrants, this might offer an explanation of why the country had a low acceptance of this proposal when it was taken to vote in the EP.

Why Greece has a low acceptance of regulations that prevent or expel migrants?

As explained in previous sections, Greece is one of the most affected Member States because of its geographical location and the Dublin Regulation, which makes the nation an arrival shore for mixed groups of migrants and the responsible Member to provide protection. In 2011, before the migration crisis, the European Court of Human Rights and the Court of Justice of the EU found that the Greek asylum system already had deficiencies (Papademetriou, 2016). As a result, Greece made legislative reforms and adopted two action plans to tackle these issues. However, when the migration crisis reached the country in 2015, it was obvious that the system still had problems. In 2016, due to the EU-Turkey Statement, Greece implemented reforms to its asylum system. Consequently, asylum seekers have to follow one of the two different procedures for international protection – which would depend on whether they arrived before or after the activation of the Statement (Skleparis, 2017). Asylum seekers who arrived before the activation of the Statement would fall under “normal” procedures for asylum and would be transferred to one of the accommodation facilities in Greece. While asylum seekers who arrived after the activation of the Statement would fall under an “exceptional fast-track” procedure. As
part of this procedure, EASO and the Greek Asylum Service conduct interviews on these asylum seekers and determine whether they are admissible or not, and then – based on a case-to-case evaluation – the Greek authorities would determine if Turkey is a safe country for them to return or not.

Besides the migration issues and the gaps in the asylum system of Greece, in 2015 and 2016 the country was still undergoing pressure from the EU because of its large financial debts (The New York Times, 2016). Some of these pressures were the austerity terms and the large budget cuts imposed by the EU.

As a country that has deep financial issues and is taking most of the burden (together with Italy) from the migration crisis, is understandable that Greece has a low acceptance of measures that just propose preventive and expelling solutions. Of course these measures help alleviate the crisis in the country to some extent, but they do not provide a solution to the thousands of asylum seekers that are stranded in their territory in low livelihoods.

5.2 Despite failing to agree on a common asylum policy, are there any areas of merging consensus? If so, what are they and why?

According to the European Parliament (Malmersjö & Remáč, 2016), the EU has opted to implement measures that “reinforce its external borders” (p.2) with the aid of agencies like Frontex and EASO. The findings of this thesis reinforce this statement considering that the most successful proposals package, was the one from December 2015. The package introduced amendments to the Schengen Borders Code, a European travel document for the return of third-country nationals, and the introduction of a European Border and Coast Guard. The fastest of these to be consolidated was the Regulation to set a European Border and Coast Guard. In fact, it took only two months for the European Council to reach a conclusion about it and call for
the process to be accelerated (Malmersjo & Remáč, 2016). By April 2016, the Council had also reached its conclusions and was calling to negotiate with the EP. After seven months since the proposal was published, by July 2016, it went to the EP for voting and it passed with a 68% approval. Although the budgetary implementation of this proposal was EUR 238 million (one of the highest), the time its processing took was very short compared to other proposals that mainly address reforms for the benefit of the migrants, qualification criteria, and their reception conditions. Such is the case for the proposals from July 2016, which after more than a year they have not reached the EP. The proposal for a European Border and Coast Guard, also implemented a system for “vulnerability assessment”. The objective of this system is to prevent the region to fall into a crisis again. This could be indeed a good measure for future issues, however, it does not solve in any way the migration crisis that has already reached the Union. It is merely a preventive measure, but it is not a sustainable solution for the problem the EU is facing. The other proposals that were successful from the same legislative package, were the proposal for a European travel document for the return of third-country nationals and the proposal for the reinforcement of checks against relevant databases at external borders. Both of them are regulations that reinforce EU’s external borders by placing measures for the prevention or expulsion of migrants. Thus, if these are the only three proposals (out of all the analyzed in this thesis) that succeeded to make it to the European Parliament, passed the voting, and had high approval between Members, it is possible to deduce that this is an area of merging consensus for the EU and its Member States. The EU and MSs have preferences and can agree faster on policies and regulations that prevent the arrival of migrants or gives way to their expulsion.

Similarly, although the EC addressed the need to create legal and safe channels for people in need of protection to enter the region, there were no concrete provisions in the proposals
analyzed on how this would be achieved. The Commission generally emphasized the need to expel those who “do not have the right to stay in the EU”, in order to welcome those who are “genuinely” in need of protection. Regulations to make the expelling of migrants easier have been established. However, in the proposals analyzed, the only measure mentioned to safely and legally bring in asylum seekers is resettlement, and although it has been successful to a certain extent, the numbers of resettled persons are still low when looking at the whole migration crisis. Additionally, although family reunion is at the top of the hierarchy of application according to the Dublin Regulation (explained in Chapter 2), there were no provisions created to oblige Member States to obey the family reunion mandate. The only effort by the EC to improve this criterion was to extend the term “family members” in its proposal for the harmonization of reception conditions. One of the objectives of the proposal for the relocation mechanism was to guarantee the right to be relocated with family members in the same MS. However, neither of these two measures solidified considering that these proposals have not been casted for a vote yet. Despite the fact that in all the proposals the Commission assures to be respecting the rights established by the Charter, which include family unity, there is very little done to make sure this is enforce by all Member States. Perhaps the EU fails to address these important issues because of the existent lack of consensus on the harmonization of the system. Finding an agreement in this area is difficult because some MSs prefer to keep the system as it is, due to the fact that it benefits them more (as explained in Chapter 2).

The Treaty of Lisbon clearly states that Member States should offer refugee status to any third-country national that is in need of international protection and that they also have the obligation to protect them from refoulement (Peers S., 2008). However, after analyzing the selected proposals, it is possible to observe how there are provisions in place that indirectly lead to the denial of international protection; for example, the creation of a safe countries list, European
travel document, and any measure that prevents asylum seekers to reach the region. The reason for taking such measures is clearly stated in the majority of its proposals, the EC perceives the migration crisis as a threat for the security of the Union and its Members. This is mainly because of the secondary movements that the inflow of migrants has caused. As explained by the Commission, secondary movement is a threat for the public policy and internal security of Member States, and for the functioning of the Schengen area. Secondary movement is mentioned in all the proposals analyzed, and there is always an effort to prevent the phenomenon. External borders are also crucial, which is why the Commission also argued in its proposal for a European Border and Coast Guard, that the migration crisis made it clear that the Schengen area can only be functional if its external borders are secured and protected. By sharing the responsibility between the EU and Member States for managing external borders, the Commission encouraged as step forward in the Union’s principles of responsibility and solidarity.

By referring to secondary movement as a threat to the internal security and public policy of MSs and the Schengen area, the EU is giving more importance to security measures than to the relocation of asylum seekers. As explained in Chapter 1, by securitizing the issue of migration, the EU is then obliged to protect the security of the region. Securitizing the issue would receive support from most MSs, especially when there is a growing sentiment of anti-immigration and right-wing nationalistic parties are gaining popularity across the region.

It is true that the EC did present proposals for the benefit of asylum seekers, the procedures to evaluate their applications, standard criteria for qualification, and equal reception conditions across the EU. However, these proposals have not made it far yet in the process to become Regulations. Thus, proving that although the EU has attempted to make some positive changes for the benefit of migrants, it still, as of end of 2017, “remains focused primarily on ways to
limit arrivals to European shores” (Human Rights Watch, 2015b, para. 8). This further demonstrates that harmonization of the asylum system is not an area of consensus for the EU and its MSs. Moreover, some proposals also mentioned how detention should always be the last resort, and that if it is provided it should be based on the basis of individual assessment of cases. However, as it was described in Chapter 2 and in the asylum policies of individual MSs (explained above in this chapter), not all Member States are following this and there were simply no provisions proposed that obliges Members to follow through. This issue proves once more, that a common asylum policy is a difficult area to reach agreement.

The EU continues to prioritize preventive and expulsive measures rather than focusing on fixing the existent problem. Despite low acceptance from some Members, such as Greece and France, this is an area in which the EU and its MSs meet at a merging point of interests. However, the reality Europe has at the moment, is that there are thousands of asylum seekers that are already in the territory, these numbers are inevitable with the perpetuation of migrants arriving to the region, and it cannot be solved on its own. Preventing more arrivals helps for the number of arrivals to not increase and reach a peak as it did in 2015, but this measure certainly does not provide a solution to the thousands of asylum seekers that are stranded in Member States like Greece and Italy.

Unfortunately, little is mentioned in the proposals on how the EU aims to tackle the root causes of the conflicts that are causing the migration flows to the region. The Commission mentions that there should be technical and financial cooperation with third-countries of origin and transit, but it does not offer thorough explanations on how this could be done. Consequently, the issues will persist and so will the migration flows that have hit the region.
Conclusion

By the end of 2017, over two years after the highest peak of asylum seekers and irregular migrants arrivals, there were still thousands of asylum seekers stranded in Greece and Italy. At this point, the relocation scheme did not even reached half of its goal, even though it targeted for a two-year period to be fulfilled. Additionally, the root causes of migration from third-countries of origin and transit, described in the first chapter, were still taking place. It is true that the number of asylum seekers and migrants decreased in the following years since it reached its highest peak in 2015; nonetheless, the inflow of migrants to the region did not cease.

After analyzing EU’s asylum policies and its reactions towards this crisis, these are the main conclusions. First, the EU has mainly focused on externalizing the crisis. Instead of pushing further to build a better and harmonized system to share equally across the region the burden of migration, the EU has been externalizing the issue by: fixing quotas on Member States for the relocation of asylum applicants; fortifying its external borders with the creation of the European Border and Coast Guard; working closely with third-countries of origin and transit; and creating more strict measures for the expulsion of migrants, for example with the new European travel document. Second, the thesis has also shown how proposals that benefit asylum seekers (e.g. reception standards, criteria for application and assessment, etc.) did not make it far in the policy-making process; this means that they are far from being adopted as Regulations. On the other hand, proposals that prevent asylum seekers arrivals or expels them, move rather quickly in the process and have been successful in being adopted as Regulations. Third, Measures that benefit some MSs more than others cause tensions in the region. Examples of this are, the Decision for temporary border control in five Schengen States and the relocation schemes. Fourth, despite its recast, Dublin Regulation failed to cope with the
crisis, yet, the European Commission continues to emphasize the importance of this mechanism and that it should be followed by all MSs. As a result, there is a perpetuation of the issue that some MSs face bigger pressures on migration than other Members.

The following reasons were deducted from the analysis to answer the first research question, “why the European Union has not been able to agree on a common asylum policy?” First reason, is the rise of anti-immigration sentiment and right-wing political parties in many MSs. As a result, the support for anti-immigration policies have been impeding agreement between the EU and its Members for a common asylum policy. Second reason is the lack of a harmonized system for MSs to assimilate in asylum applicants, review their applications, standard criteria for qualification for international protection, and reception conditions across the region still vary greatly. An agreement to standardize these issues has not been possible. Third reason is externalization. The EU externalized the issue by transferring the responsibility to MSs, rather than proposing solutions that will help solve the issue of asylum. Fourth, the continuation of mechanisms like the Dublin Regulation, poses difficulties for agreeing on a common asylum policy. This is because, according to the Dublin system, an asylum seeker must register in the country of arrival and it is the responsibility of this State to provide protection to the asylum seeker. Consequently, the system affects certain members more than others. States that are in border regions of the EU territory (e.g. Greece, Italy, Spain) are under a lot of pressure considering that they receive far more arrivals than other Members. This has been specially the case with arrivals by sea, which according to the UNHCR reached 352,093 in 2016 (UNHCR, 2017). Therefore, this kind of policies have a greater impact on some MSs, making it more difficult for Members to reach an agreement.
Similarly, these are the reasons that provide an answer to the second research question, “despite failing to agree on a common asylum policy, are there any areas of merging consensus?” First, the EU and its MSs can find consensus on policies that prioritize preventive measures rather than focusing on fixing the existent problem. The biggest test for the EU’s asylum policies took place in 2015 when over a million asylum seekers arrived to the region. Bordering states could not sustain on their own the responsibility that the Dublin System entails. Some Members opened their doors in the face of the humanitarian crisis; while other Members simply refused to cooperate. The result was tensions among MSs and a lack of agreement on how to deal with the number of asylum seekers. The systems the EU had in place, before the peak of arrivals in 2015, failed to deal efficiently with the actual (large) numbers; therefore, more preventive measures – such as the European Border and Coast Guard – were adopted. These measures have succeeded at decreasing the number of arrivals, but they do not help Members to deal with the crisis of the asylum seekers that have already made it to the region. Nonetheless, due to their success and the securitization of the issue, blocking the entrance of asylum seekers and irregular migrants is a main area of merge consensus between the EU and MSs. The rise of anti-immigration sentiment in some MSs supports this finding. Second are of consensus is connoting secondary movement as a threat to the internal security and public policy of MSs and the Schengen area. The migration crisis requires clear guidelines on how MSs should (must) react, however, by securitizing the issue the EU creates a shift of priorities – moving from humanitarian measures to security measures. Overall, the EU has been successful on establishing long lasting agreements on issues that provide a “win-win” situation for all the parties involved – with the most prominent example being economic matters. However, when it comes to issues that (might) comprise the national security of its Members or their sovereignty, the EU has not obtained the same results. As a result, the migration and asylum policies in place lack harmony and when a crisis hits naturally tensions will arise due to the
lack of agreement on how to deal with this issue besides blocking their entrance. So far, the legislative packages presented by the EC helped alleviate the tensions in some occasions, but they did not offer long-lasting solutions, nor did they help bring new areas of agreement for both the EU and its Members. This means that, as the inflow of asylum seekers and irregular migrants continues, tensions in the region will prevail.

In 2015, a relocation scheme was created to maintain the Dublin system in the face of a migration crisis, and encourage the Union’s principles of responsibility and solidarity. The scheme only encompassed 120,000 relocations of persons in need of international protection and resettlement of an extra 40,000 applicants, which makes a total of 160,000 refugees to be distributed across the Union, a figure that is minor when taking into consideration that only in 2015 the number of refugees in the world was 21.3 million from whom 54% of them were from Syria, Afghanistan and Somalia (UNHCR, 2016d). Member States fell short on reaching the goal established by the Commission, yet, they succeeded on agreeing and establishing new legislations that impede not only the entrance of irregular migrants, but also the entrance of asylum seekers. It seems as in efficiency to create proposals, take them to vote, and turning them into legislations, only applies for regulations that provide preventive and expulsive measures. None of the proposals that presented provisions for the benefit of asylum seekers and harmonization for the procedure and reception across the Union, have made it to the European Parliament; making it visible that the EU and its Members cannot agree on providing sustainable solutions for the inevitable inflow of migrants that will continue to exist. Pushing migrants away from EU’s shores and creating mechanisms that make easier the expulsion of those who “do not have the right” to stay in the Union, does not solve the migration crisis nor it would help in the case of a future crisis. Of course, the EU cannot accept an unlimited number
of asylum seekers, “but it is more important and more effective to address the problem rather than try to avoid it” (Katz, 2017, p. 329).

The Dublin Regulation is the foundation of the asylum system in the EU and was born out of the Schengen agreement. However, despite the recasts and reforms added to Dublin, it is a system that still protects the interests of certain Member States, while leaving the burden of migration to others. It is a system that is outdated, does not oblige Member States to respect asylum seekers’ rights, and certainly it does not guarantee equal and fair procedures and reception conditions. Regardless, the EC continues to emphasize the importance of this system and its proper functionality.

**Limitations and future research**

The space limit of this thesis did not allow for the analysis of all the proposals that were presented by the Commission in the two years that were examined (2015 and 2016). Perhaps the analysis of all the proposals can bring an even deeper insight into the EU’s reactions towards the migration crisis and their reasons. Additionally, because the events analyzed in this thesis are recent, some proposals are still under consideration and have not been adopted or fully rejected yet; therefore, their final results could not be taken into consideration. Similarly, time and space constraints made it difficult to find more detailed information about the individual reactions of Member States towards the proposals.

Looking back at 2017, it is possible to say that news in Europe have been filled with political speeches that address the migration crisis and that there was a rise of right political parties. In this regard, it would be interesting for future research to compare the migration crisis analyzed in this thesis with the political atmosphere of individual Member States. An example could be
the comparison of relocations completed and the political preferences in the state at the time. Another interesting idea for future research is to compare the crisis analyzed in this research with another migration crisis in the region and compare the actions taken by the EU.
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