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## The pursuit of a response to the refugee crisis

The case of the EU-Turkey Statement

Master's thesis in European studies

Supervisor: Wolfram Kaiser

Trondheim, May 2018

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# Contents

- Acknowledgements ..... i
- Abbreviations ..... v
- Chapter 1: Introduction ..... 1
  - Topic and Research Question ..... 1
  - State of the art ..... 3
  - Relevance of this research ..... 8
  - Concepts and Methodology ..... 8
  - Overview of the structure and main findings ..... 11
- Chapter 2: A Brief History of the European Union’s Asylum and Migration Policies ..... 13
  - From Schengen to Lisbon ..... 13
  - Since the Stockholm Programme ..... 21
- Chapter 3: EU actors and the refugee crisis ..... 25
  - The Crisis of the Dublin Regulation and Member States’ reactions ..... 25
  - Reforms under the EU Agenda on Migration ..... 28
- Chapter 4: Motivation for the bilateral agreement ..... 33
  - The EU-Turkey Statement; an exception to the rule ..... 33
  - From unwanted accession country to crucial partner ..... 34
  - The EU-Turkey Statement – implementation of the agreement ..... 38
  - Motivation for the EU-Turkey Statement ..... 40
- Chapter 5: EU policy development on asylum and migration ..... 49
  - Uneven distribution as a lasting problem ..... 49
  - Externalisation as a solution? ..... 50
  - Securitisation or Normative Power Europe? ..... 51
  - New intergovernmentalism: Member States as prominent actors ..... 52
- Chapter 6: Conclusion ..... 57
- List of references ..... 61



## Abbreviations

<b>AFSJ</b>	Area of Freedom, Security and Justice
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>CAMM</b>	Common Agenda on Migration and Mobility
<b>CEAS</b>	Common European Asylum System
<b>CoE</b>	Council of Europe
<b>CJEU</b>	Court of Justice of the European Union
<b>CSDP</b>	Common Security and Defence Policy
<b>EASO</b>	European Asylum Support Office
<b>EC</b>	European Community
<b>ECJ</b>	European Court of Justice
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EP</b>	European Parliament
<b>ERF</b>	European Refugee Fund
<b>EU</b>	European Union
<b>FRONTEX</b>	European Border and Coast Guard Agency
<b>GAMM</b>	Global Approach on Migration and Mobility
<b>JHA</b>	Justice and Home Affairs
<b>MP</b>	Mobility Partnership
<b>MEP</b>	Member of the European Parliament
<b>NGO</b>	Non-Governmental Organisation
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>QMV</b>	Quality Majority Voting





# **Chapter 1: Introduction**

## **Topic and Research Question**

In the years 2015-2016, Europe experienced an unprecedented influx of migrants and refugees, a process that soon was coined the ‘refugee crisis’. War and conflict in the Middle East and in sub-Saharan regions of Africa has largely been to blame for the high numbers of displaced people, many of whom seek refuge in Europe. In 2015 and 2016 alone, 2,4 million first time asylum seekers applied for international protection in the Member States of the European Union (EU) (Eurostat, 2016b, 2017b). EU policies have been put to the test in trying to manage the high influx of migrants. The Dublin Regulation – aimed at determining the country responsible for the asylum seeker – quickly proved insufficient in handling the situation. The Regulation contributed to a heavy burden of the refugee crisis ending up in the frontline Member States of the EU, in particular Italy and Greece.

The focal point of the refugee crisis has been the flow of refugees crossing the Mediterranean to reach Europe, many losing their lives on the journey (UNHCR, 2018). From 2015 to 2017, more than 1,5 million people travelled this route, most heading for Italy or Greece. The Dublin Regulation resulted in a ‘double burden’ on the frontline Member States. Being a frontline Member State, these were the first countries of entry for a large number of migrants. The Dublin Regulation also often results in the return of asylum seekers to the first EU Member State the asylum seeker applied for asylum, in these instances commonly Italy and Greece (European Parliament and Council of the European Union, 2013, p. 37). The function of the Dublin Regulation, along with the uncontrolled arrival of migrants and asylum seekers over the Mediterranean, resulted in a disproportionate amount of pressure on the frontline Member States who bore the weight of processing the many asylum applications.

The EU has implemented various measures in an attempt to deal with the refugee crisis. In 2015, the Commission set out the European Agenda on Migration, presenting immediate and long term actions to handle the pressure (European Commission, 2015b). So-called ‘hotspots’ were created in places where the pressure was highest, to provide experts and more efficiently process the migrants entering the EU. Saving lives at sea was a main priority. The budgets for Operations Triton and Poseidon, led by the European Border and Coast Guard Agency

(Frontex)<sup>1</sup>, were tripled in order to assist Italy and Greece save lives in the Mediterranean. An emergency relocation scheme was set up to ease the burden on the frontline Member States. This proposal has only been partially successful, as several member states opposed the scheme, and the results have been underwhelming. By November 2017, roughly 31,500 people had been relocated out of the 120,000 planned (European Commission, 2017d). Despite the measures taken, the Member States are still unable to evenly share the load of the many asylum seekers entering the EU. The main burden is still on the frontline Member States, in particular Greece.

Perhaps the most notable recent EU action concerning asylum and migration is the EU-Turkey Statement, which forms the empirical focus of this thesis. The Statement takes the form of an agreement between the EU and Turkey, aiming at limiting large flows of migrants in reaching the EU. From now on, for simplicity's sake, the Statement will be referred to as the Agreement, as the word 'statement' is not representative for what the deal entails. More specifically, the Agreement aims at limiting the number of migrants crossing from Turkey to Greece. The agreement has been fiercely debated in Europe, and has been sharply criticised by human rights organisations as a breach on fundamental rights of refugees (The Netherlands Institute for Human Rights, 2017, pp. 3, 10). This seems to contradict the traditional view of the nature of the EU. The EU has traditionally been viewed as having a strong commitment to human rights. This has contributed to the notion of the EU being a normative power, i.e. that the EU is a value-driven ideational entity that diffuses these norms in their international relations (Manners, 2002). This leads to questions of how and why the EU and its Member States selected the use of such a controversial bilateral cooperation agreement in a complex refugee crisis, and how this measure is justified by the EU.

Against this background, the core research question of this thesis is *why the EU has resorted to the EU-Turkey bilateral agreement in response to the refugee crisis*. To answer this question, three sub-questions are defined. First, *how did EU asylum policy develop up until the refugee crisis?* Second, the thesis asks *what the EU's response to the refugee crisis has been*. And third, *what motivated the EU to resort to the bilateral agreement with Turkey?*

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<sup>1</sup> The creation of a common external border called for further cooperation concerning security, migration and asylum. Frontex was created as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, renamed in 2016 the European Border and Coast Guard Agency, to manage the EU's external borders.

## State of the art

This section critically discusses previous research relevant for the thesis. The focus is on research that contributes to explain why the EU has resorted to the bilateral agreement in a response to the refugee crisis. First, the thesis will address the emergence of the common European asylum and migration policy. Second, the thesis will narrow in on literature concerning distribution of asylum seekers and externalisation of policies. It was found that research on EU asylum and migration policy relating to the bilateral agreement with Turkey have a particular focus on these two topics (Bordignon & Moriconi, 2017; Cherubini, 2017; Salazar, 2017; E. Thielemann, 2018; Zaun, 2017). Additionally, they represent the two main controversial aspects of EU policy on asylum and migration, and contribute to explain what instigated the EU's move to bilateral cooperation. Lastly, a brief overview of research on the bilateral agreement with Turkey is given to get an understanding of the gap this thesis seeks to fill.

Since the beginning of European cooperation on asylum and migration policy, scholars have tried to explain the shift from national policy to intergovernmental policy, as well as find out whether the EU's policy on the area is more restrictive than the domestic policy. Because of the interconnectedness of the two issues, it is common in literature to refer to them together as 'EU asylum and migration policy' (Kaunert & Léonard, 2012). EU cooperation on asylum and migration policy has for long been accused of forming a 'Fortress Europe'. Drawing on criticism from the United States of the planned European internal market in the 1980s, this term was coined by Geddes (2000). It refers to the notion that Europe through restrictive measures is building a fortress for themselves, shutting out outsiders. This term has also been linked to the EU's asylum and migration policy. Since the 1990s, migration has increasingly been viewed as a security threat to receiving countries, on the grounds of it being linked to crime, terrorism or Islamic fundamentalism (Boswell, 2003b, p. 623). It has therefore commonly been argued that EU cooperation on asylum and migration has led to restrictive policies in the respective areas, making it increasingly difficult for asylum seekers to reach European territory (Lavenex, 2001; E. Thielemann & El-Enany, 2010; Zaun, 2017).

The 'Fortress Europe' concept has led to approaches aimed at understanding the origins of this restrictiveness. One of these approaches is the *venue-shopping* framework. This is a framework used to explain the emergence of a common EU policy on asylum and migration. It was most notably put forward by Guiraudon (2000). She suggested that venue-shopping is the framework best suited to explain the timing, form and content of EU cooperation on this area.

The notion of venue-shopping builds on the idea that national governments, when encountering obstacles in their policy-making, seek alternative venues that facilitate their goals. National officials wanted a more restrictive asylum and migration policy than they were able to conduct on the national level. Guiraudon argues that national law and order officials began seeking the European venue of policy-making when they met obstacles in developing increased migration controls in the 1980s and 1990s (Guiraudon, 2000, p. 252). At the European level of policy-formation, policy makers were not under the same jurisdictional constraints as in national policy-development. They also dealt with less opposition from ministries, parliamentarians and non-governmental organisations (NGOs) (Guiraudon, 2000, p. 252). Based on this framework, it was predicted that EU policy on asylum and migration would be more restrictive than the national policies. It was thought that EU policy would settle at the lowest common denominator, leading to a ‘race to the bottom’ among the Member States. They would strive for the most restrictive policy allowed by the EU to deter migrants from choosing their respective country as a destination (Zaun, 2017, p. 4).

However, there is disagreement in the research community whether EU policy on asylum and migration has become increasingly restrictive or not. The prediction of increased restrictiveness is contested by scholars such as Zaun (2017), Kaunert and Leonard (2012) and Thielemann and El-Nany (2010). Thielemann and El-Nany establish that there is no evidence to support the claim that a common EU policy has led to notably restrictive refugee protection and policies. On the contrary, the standards of refugee protection and policies have either remained the same or in some instances been strengthened (Kaunert & Léonard, 2012, p. 1402; E. Thielemann & El-Enany, 2010, p. 226; Zaun, 2016; 2017, p. 5).

Kaunert and Léonard (2012) argue that the increase in standards is a result of strengthened EU institutions and judiciary, as well as changes in their system following adoptions of new treaties (pp. 1409-1410). Zaun (2016) argues further that these adoptions can be credited to strong Northern States’ influence on decision making in the EU. They were not prone to lower their standards for EU’s asylum and migration policies, but would rather preserve a *status quo*. The incorporation of their standard level into EU policy would lead to an increase of standards in certain (Southern) Member States, as their standards in the outset was beneath that of the Northern ones. However, Zaun argues that many states have not been able to implement the new directives in practice, or have been unwilling to do so. Thus the harmonisation of policies might not be as successful as it seems (Zaun, 2017, pp. 210-221).

An area in the migration and asylum policy that has proven difficult to harmonise is the distribution of asylum seekers. This has been a high standing issue since the outset of the common EU asylum and migration policy (Trauner, 2016). The equal distribution of asylum seekers in the EU has proven to be a difficult task. Research has been conducted on how the failure of the ‘sharing’ of migrants within the EU has resulted in the need for alternative measures to ease the burden on certain EU Member States. Uçarer (2006) argues that one of the reasons for the failure of even distribution is its weak position as a norm in the asylum regime (p. 223). No concrete and automatic mechanism is in place to ensure the even distribution of asylum seekers. Resettlement programs are scattered, and in situations of mass influx, there is no system to ensure aid to countries faced with disproportionate burdens.

The difficulty of evenly distributing migrants is not a new phenomenon in Europe (Barutciski & Suhrke, 2001; Boswell, 2003a; E. Thielemann, 2003; Uçarer, 2006). The Kosovo refugee crisis, instigated by the implosion of Yugoslavia, left refugees stranded for days without getting protection from European states. This highlighted the conflict between refugees’ rights and state interests. It kick-started a conversation on the distribution problem in terms of asylum applications in Europe, led by Germany, who had taken the main toll of asylum seekers from Kosovo (Barutciski & Suhrke, 2001; Uçarer, 2006, p. 43).

Thielemann (E. Thielemann, 2018) argues that the EU has been unable to work out a way of distributing asylum seekers evenly, despite their efforts. The EU has indeed seen a significant increase in arrivals of migrants since 2015, but this is not the sole reason even distribution has proven difficult in the EU. In fact, Thielemann emphasises that the EU’s relative ‘burden’ of migrants on a global scale is generally low, e.g. compared to countries in the immediate vicinity of conflict countries such as Syria (p. 66). He presents the uneven distribution as an instigator for certain efforts made by the EU in order to rather externalise the burden of asylum seekers to third countries, as exemplified by the EU-Turkey agreement (p. 64).

Thielemann further points out EU policy measures as the main reason why the even distribution of asylum seekers has failed (pp. 63-64). The Dublin Regulation has regularly been criticised for putting a disproportionate amount of pressure on the Southern European border countries (Zaun, 2017, p. 4). Thielemann (2003, 2018) points to the Dublin Regulation for contributing to the lopsided distribution of migrants. In turn, it provides legitimisation to efforts of externalisation, such as the EU-Turkey Agreement (E. Thielemann, 2018; Uçarer, 2006, p. 231). Zaun (2017) argues that the EU-Turkey Agreement is an external compensatory measure

to make up for the EU's incapacity to establish a fully functioning mechanism to distribute asylum seekers in the EU (p. 254).

This brings us to the externalisation of EU asylum and migration policies. Previous research on this area contributes to explain why externalisation and bilateral cooperation has become such a big part of EU policy on asylum and migration. The EU-Turkey Agreement is an example of externalisation of EU policy on the area of asylum and migration. Gammeltoft-Hansen (2007) describes externalisation, or extraterritorial policies, as “structural efforts carried out by European States to extend their policy reach on asylum and migration issues outside their territory” (p. 1). According to him, externalisation of asylum and migration policy by the EU is done in order to deflect the burden that asylum seekers inflict on Europe by extending it to third countries.

Gammeltoft-Hansen (2007) further states that this way of managing migrant flows is one of the most striking developments of the common European asylum and migration policy. Previous research on externalisation of EU policy on asylum and migration has emphasised the risk of neglecting migrant's fundamental rights in resorting to these kinds of security measures to stem irregular migration (Andrijasevic, 2006; Gammeltoft-Hansen, 2007; Garlick, 2006; Klepp, 2010; Lavenex, 2001; López-Sala & Godenau, 2016). López-Sala and Godenau argue that restrictive migration policies cast doubt on the legitimacy of migration control, as it is caught between refugee protection and state interests of internal security (López-Sala & Godenau, 2016).

Gammeltoft-Hansen (2007) fears externalisation of asylum and migration policy is giving rise to a ‘protection lite’, in which more developed European states with a global reach can exploit the refugee regime. This may cause refugee protection to deteriorate, as “protection may fall within the formal requirements of the 1951 Refugee Convention, yet with substantially fewer calories than the protection owed by European States directly” (p. 23). When the responsibility of refugee protection is transferred to less developed states, states with poor human rights records or less developed asylum systems, it will affect the quality of the protection provided. In turn, a ‘protection lite’ regime is established. Zaun states that the EU is economically better equipped than many of the countries in the neighbourhood of conflict countries, which includes Turkey (Zaun, 2017, p. 255). The transfer of responsibility of asylum seekers to Turkey through the EU-Turkey Agreement is therefore criticised.

Research on the actual bilateral agreement with Turkey is limited. This can largely be attributed to the agreement only being active since March 2016, and the Agreement is ongoing.

The research that has been conducted has for the most part addressed the issue of maintaining human rights or the legality of the Agreement (Bordignon & Moriconi, 2017; Cherubini, 2017; Haferlach & Kurban, 2017; Nakache & Losier, 2017; Poon, 2016; Rygiel, Baban, & Ilcan, 2016). It covers the consequences of the bilateral cooperation with Turkey, concerning human rights and refugee protection.

There has been significant contestation of the legality of the readmissions from Greece to Turkey, in particular whether the procedural framework to safeguard the principle of *non-refoulement* is sufficient (Cherubini, 2017). Gammeltoft-Hansen argues that the externalisation of asylum policy is an attempt by states at ridding themselves of the obligations of refugee protection (2007, p. 5). This might be perceived as a harsh statement, but it is not an uncommon one. The United Nations High Commissioner for Refugees (UNHCR) had a similar statement, when referring to the return of refugees to ‘safe third countries’. If proper safeguards are not set up, “it would be a clear case of avoiding responsibilities”, in addition to a breach in the *non-refoulement* principle (UNHCR 2003, cited in Uçarer, 2006, p. 232). The *non-refoulement* principle is considered the core of the refugee protection regime, enshrined in Article 33 of the Refugee Convention. States are obliged “[...] not to send back, or *refouler*, a refugee to a place in which he or she risks persecution” (Gammeltoft-Hansen, 2007, p. 4). When a refugee enters the territory of any country party to the Refugee Convention, this country is obliged not to return the refugee to a country where he/she is not safe.

Cherubini (2017) argues that “[...] it is questionable that a person who was returned to Turkey would not face the risk of persecution or any other serious violation of his/her fundamental human rights” (p. 42). The EU has on several occasions accused Turkey of human rights violations. The attempted coup in July 2016 led to an increasing oppressive authoritarian regime led by President Recep Tayyip Erdoğan. This has resulted in calls from the UN, the Council of Europe and the EU for Turkey to respect their international obligations for constitutional order and international human rights law, but the situation is still deteriorating (Human Rights Watch, 2017; Reuters, 2017; Stockholm Center for Freedom, 2018). Thus, it may seem contradictory to send refugees back to that very country, as it may be argued that in returning refugees to Turkey, Article 33 of the Refugee Convention, as well as Article 3 of the European Convention of Human Rights could be breached (Cherubini, 2017).

## **Relevance of this research**

As presented above, research on EU asylum and migration policy has addressed its evolution, and attempted to explain why it has evolved the way it has. Research on the EU-Turkey agreement has been critical from a normative perspective regarding its legality human rights-wise, and of the humanitarian consequences. Previous research, however, does not address motives for the recent development in EU policy on asylum and migration in response to the refugee crisis. My intention for this thesis is to fill this gap, by doing a case study aiming to unveil the EU's motives behind one of the most recent controversial developments in EU asylum and migration policy.

The essence of my thesis is not to find out whether the EU-Turkey agreement poses a problem legally or ethically, as research on this has already been conducted, and has to a great extent concluded that it does (Cherubini, 2017; Haferlach & Kurban, 2017; McEwen, 2017). What the literature does not show, is why the EU has turned to such a drastic measure in a response to the refugee crisis *despite* its highly criticised legal and human rights nature.

## **Concepts and Methodology**

This thesis is addressing issues of asylum, migration and refugees, thus a clarification of these terms is useful. The word 'migrant' is referring to people choosing to move on the grounds that they wish for a better life, often economically, but also for education, family reunion or other reasons. The word 'refugee' refers to a person fleeing their country on the grounds of armed conflict or persecution, making it too dangerous for them to return to their country. They are defined and protected under the 1951 Refugee Convention (UNHCR, 2016b). An 'asylum seeker' is a person in the process of seeking asylum under the 1951 Refugee Convention on the grounds that if they returned to their country they would be in danger because of race, religion, nationality, political belief or membership of a particular social group. In other words, it has not yet been established whether they fulfil the 'criteria' of receiving refugee status, and hence protection. For this thesis, the topic is the refugee crisis, and the main focus will therefore be on the weakest of these groups, namely refugees and asylum seekers.

The thesis uses a qualitative research design. Qualitative designs aim to explore and understand underlying reasons for and motivations behind a particular development or, in this case a political decision. The design is therefore compatible with the aim of this thesis. Yilmaz (2013) points out that it often is defined as research not able to produce findings based on



numeric data. Contrary to quantitative designs, whose aim is to generate numeric data to be measured and analysed in a more statistical manner (Creswell, 2014, p. 4; Yilmaz, 2013, p. 311). For the thesis, a qualitative research design is the best fit, because the aim is to explore the motives of the EU for their actions in one specific case.

An inductive research approach is used for this research. This approach is often combined with a qualitative design. Yilmaz(2013) states that “ [...] qualitative studies are concerned with process, context, interpretation, meaning or understanding through inductive reasoning” (p. 313). The inductive approach is chosen, starting with the research problem at hand, as the objective is to contribute to a more generalised understanding of recent EU policy-making within asylum and migration policy.

In writing this thesis, two concepts were found to be helpful in explaining the EU’s policy-making, namely new intergovernmentalism and securitisation. New intergovernmentalism argues that, post-Maastricht, Member States have been the main actors leading the policy-making in the EU (Bickerton, Hodson, & Puetter, 2015). Given the national interests of internal- and border security in connection to asylum and migration policy, this theory is highly relevant to explore. It helps explain the influence of Member States’ interests in EU policy-making. Securitisation argues that actors, by labelling an issue a security threat, justify the use of extraordinary measures to prevent a breach on security (Waever, 2014). The use of extraordinary measures for security reasons can, according to the securitisation concept, be done at the cost of human rights (Huysmans, 2000; Triandafyllidou & Dimitriadi, 2014). Given the Agreement’s characterisation as an extraordinary measure (Council of the European Union, 2016a, p. 1), and the human rights concerns it poses, the securitisation concept is relevant to explore in this thesis. Through understanding the relevance of the new intergovernmentalism and securitisation, these can be used to distinguish the EU’s recent policy-making in the area of asylum and migration.

The thesis conducts a case study on the EU-Turkey Agreement. A case study serves as means for in-depth understanding of a particular problem. It is a tool for arriving at generalisations or building theory from the observations made, making it compatible with the inductive design of the thesis. Additionally, case studies can contribute to understanding theories in practice. Through this process, one can facilitate further research on a topic. Through doing a case study on the EU-Turkey Agreement, the thesis aims to gain understanding of the recent developments of EU asylum and migration policy during the refugee crisis. However, given the extraordinary nature of the Agreement – being an emergency response during a crisis

situation – generalisations, especially of future policy-making, based on this case study must be done with utmost caution. However, the thesis is able to do some generalisations of EU's recent policy-making. This is done with a certain degree of confidence by drawing on the findings of the EU's policy-making over time, and connecting the general findings of the thesis with explanatory theories that legitimise the arguments.

The thesis' inductive design aims to build theory by using case study. One way to infer theoretical observations from a case study is to use process tracing (Van Evera, 1997, pp. 67-68). This entails tracing the evolution of – in this case – policy on a particular issue like migration. The thesis does this by conducting a policy analysis of EU asylum and migration policy with the intent of tracing its development and finding motives for the EU-Turkey agreement. In order to trace the development of the EU policy and unveil their motives, the thesis will conduct a content analysis of documents. Bowen (2009) argues that document analysis is particularly applicable to qualitative case studies, as this type of study calls for “rich descriptions of a single phenomenon, event, organisation, or program” (p. 29). Content analysis is performed in order to interpret meaning from these documents (Hsieh & Shannon, 2005).

As stated by Merriam and Tisdell (2015), “documents of all types can help the researcher uncover meaning, develop understanding, and discover insights relevant to the research problem” (p. 189). Different sources of documents are therefore analysed. First of all, the thesis analyses official EU documents concerning asylum and migration policy in the relevant timeframe, as well as documents on the EU-Turkey Agreement. Second, material from human rights organisations such as Human Rights Watch, Amnesty International and the Council of Europe are used to comment on the human rights issues with the EU-Turkey deal. These organisations are all independent, making them credible sources for information. Also, statements and statistics from Eurostat and the UNHCR are used to contextualise the refugee crisis. Finally, news articles are included in the document analysis. EU-documents do not necessarily present an impartial side of the situation, thus news articles are used to create a more nuanced account of the findings. Additionally, news articles are useful in referencing reactions to the refugee crisis among EU Member States. News sources that specify in EU-related news are chosen to get material that is relevant to the thesis. The news sources chosen are the *EU observer*, *Politico* and *Euractiv*. These sources are all easily available on the internet. All three news sources are nonpartisan, specialising in EU policies and politics.

The timeframe of the data gathering is from 2014-2016. 2014 marks the beginning of the refugee crisis, although at a very early stage at this point. However, a historical analysis

based on previous literature is also presented in order to create an insight to how EU asylum and migration policy has been conducted in the past, and how this relates to the thesis' findings. Given that the aim is to discover the motivations of the EU for the bilateral agreement, the timeframe ends in 2016, when the EU-Turkey agreement was signed.

## **Overview of the structure and main findings**

The thesis follows a chronological order. Chapter two provides an overview of the development of EU's asylum and migration policy, and the institutional changes of the policy making. It outlines the main controversies of the policy. The chapter finds that much of the policy-making power has officially been transferred to the Commission and the European Parliament. However, because of strong national interests of internal- and border security related to asylum and migration, Member States of the EU have through the Council remained in a leading position as to what changes are made in this policy area. The failure of even distribution of asylum seekers has been the main problematic aspect of asylum and migration policy in the EU, being an instigator of externalisation of the policy.

Chapter three analyses the responses to the refugee crisis by the EU and its Member States. It finds that the incomplete EU migration and asylum system led to difficulty in leading a common and swift response to the refugee crisis. The EU's response is characterised as being emergency responses to compensate for the incomplete asylum and migration system. Another impacting factor was the polarised opinions of the Member States on what actions to take, influencing decisions in the Council.

Chapter four analyses the EU's motivations for the bilateral agreement with Turkey. The thesis argues that the EU-Turkey Agreement represents a shift in EU's bilateral cooperation in the field of asylum and migration, and takes the form of a more extreme agreement than previous ones. The findings indicate that the EU-Turkey Agreement was a measure of last resort, as the Member States and the EU as a whole failed to find a response to deal with the high influx of refugees. The findings also indicate that the main motivation for the EU behind the Agreement were interests of security rather than humanitarian interests. This is on the grounds that the Agreement fails to properly address humanitarian issues, as well as the Agreement's questionable nature in relation to international law and human rights.

Chapter five presents a discussion of the thesis' findings in a wider context of the EU's motivation for policy-making on asylum and migration. The findings of the case study indicate

that in asylum and migration policy, the EU do not mainly act as a normative power during the refugee crisis, exerting influence on the basis of human rights values. Instead, the EU is acting on grounds of security interests, coinciding with the theory of securitisation. Despite the shift to communitarisation of policy making, the Council still holds the most prominent position on this policy area. The policy development of asylum and migration is therefore notably shaped by national interests of security, making externalisation preferred over comprehensive efforts to distribute asylum seekers evenly internally. These conclusions correspond with the notions of new intergovernmentalism, and contribute to understand EU policy-making over issues of migration and asylum.

Chapter 6 consists of the conclusions of this thesis. It discusses how the case study has contributed to the understanding of new intergovernmentalism and securitisation in EU asylum and migration policy, and how these theories in turn help understand EU decision making during the refugee crisis. The thesis finds that the EU's asylum and migration policy lay a poor foundation for responding adequately to the refugee crisis. The thesis concludes that motives of security were most prominent behind the EU-Turkey Agreement. The securitisation theory helps explain why the EU resorted to such a drastic measure as the EU-Turkey Agreement, justifying it on grounds of the refugee crisis posing a security threat to Europe. New intergovernmentalism in turn explains how and why the Member States through the Council were able to maintain the security focus throughout policy-making, especially during the refugee crisis.

## **Chapter 2: A Brief History of the European Union's Asylum and Migration Policies**

In order to assess the EU's direction in their asylum and migration policy after the refugee crisis leading up to the Turkey Agreement, it is important to take into account the development of their policy up until 2015. This chapter provides a historical overview of EU policies regarding asylum and migration and an outline of the current asylum and migration regime.

### **From Schengen to Lisbon**

EU cooperation on issues of asylum and migration first became a topic in the 1980s. Member States of the then European Community (EC) realised that if they wanted to eventually abolish internal borders, cooperation on certain policy areas was the price to pay. With the creation of common external borders came the need for coherent and common rules for access and security. Appropriate measures concerning external border control, asylum, migration and security was necessary. These issues could no longer be addressed solely on a national level.

Since the Treaty of Amsterdam in 1999, EU policy on asylum and migration has been under the framework of the Area of Freedom, Security and Justice (AFSJ), indicating the security aspect of asylum and migration poses. Before this, it was under the pillar of Justice and Home Affairs (JHA). Asylum and migration are sensitive issues because of state interests of national security, identity, as well as socio economic interests (Huysmans, 2006). Traditionally these have been policies governed at the national level (Guiraudon, 2000). Consequently these are policies that have undergone a slow and tedious transfer to the EU (Uçarer, 2013, p. 282).

The most prominent project in the early days of migration policy in the EU was the Schengen Agreement. The Member States of the European Community were not in complete agreement on the issue of abolishing internal borders. Opposing opinions on the issue led to the preliminary creation of the Schengen Agreement outside the EC in 1985. Some Member States were eager to realise an agreement to remove internal borders. Hence, the Schengen Agreement was initially made by Belgium, the Netherlands and Luxembourg (the 'Benelux' countries) together with France and Germany to gradually do away with internal border control with the harmonisation of visa policies. In 1990, the Schengen Convention was signed for the Schengen Area's completion, but it was not until 1995 the Convention came into force in the member

states. At the time, the member states consisted of France, Germany, Belgium, Netherlands, Luxembourg, Portugal and Spain. In 1995, the Schengen project still lay outside the EC. However, during the 1990s, efforts were made to implement Schengen into the EC. By 1997, the Schengen Area had 13 EC member states. With the Amsterdam Treaty in 1999, one finally saw the integration of the Schengen Agreement into the legal framework of the EC. Of the today's 26 members of the Schengen Area, 22 are EU Member States.

The removal of control of persons applied both for persons of the member states and of third countries. The controls were only to be re-introduced under special circumstances. With the Schengen Agreement came also transnational cooperation on asylum. Measures were laid down to assign responsibility to one single country so as to prevent multiple and duplicate asylum claims among the member countries. The mechanism has later been used and further developed by the EU in the form of the Dublin Regulation<sup>2</sup>.

The Dublin Convention<sup>3</sup> was signed in 1990 in Dublin, Ireland. In 1997 it was ratified and came into force. The Schengen project still lay outside EC policy in 1990, but as the EC had the same ambition to abolish internal border controls, they were faced with the same need as the Schengen Area concerning a common policy on asylum (European Council on Refugees and Exiles, 2006). The conclusions on how to manage asylum claims under the Dublin Convention were therefore similar to those put forward in the Schengen Agreement. It has been seen as a measure to fill the lack of a mechanism to distribute responsibility of asylum claims within the Community, as the number of asylum seekers rose in the 1980s (Marinho & Heinonen, 1998).

There were two main objectives of the Dublin Convention. The first was to prevent *asylum shopping*. According to the European Migration Network<sup>4</sup>, the term refers to the act

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<sup>2</sup> The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Title II, Chapter 7, Article 30

<sup>3</sup> The 1990 "Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities". Currently the Dublin Regulation III (2018), previously the Dublin Convention (1990) and the Dublin II Regulation (2003).

<sup>4</sup> The European Migration Network is an EU network of migration and asylum experts providing objective, comparable policy-relevant information on issues on migration and asylum. It was established by the Commission in 2008.

where “third-country nationals apply for international protection in more than one Member State with or without having already received it in one of those Member States” (European Migration Network, 2018a). The second objective was to make sure refugees would have one country responsible for their application, and prevent them from being shuttled from one country to the next unable to find a country willing to process them. This was termed *refugees in orbit* (European Migration Network, 2018b). A system that determines a single state to hold responsibility for the asylum claim would solve these issues (Hurwitz, 1999, p. 649).

The Dublin Convention set out a hierarchy of criteria to establish the Member State responsible for the asylum application processing (European Council on Refugees and Exiles, 2006). The article that was most frequently used was Article 5, which stated that the Member State that had issued a residence permit to the asylum seeker is responsible for the asylum application. Article 6 and 7 assigned responsibility to the Member State where the asylum seeker had illegally or legally entered. If none of the criteria above were fulfilled, the responsibility lay with the Member State where the application was lodged.

The Dublin Convention was early on being criticised, especially by NGOs. There were three main concerns (European Council on Refugees and Exiles, 2006). The first was that the Convention did not take into account the interest of the asylum seeker regarding the State they would like their claim to be processed. Second, there was the concern of the criterion placing responsibility of an asylum claim with the Member State of first entry of the asylum seeker. It was – and still is – argued, that this placed a particular burden on Member States geographically located on common migrant travel routes. This made them predisposed to larger inflows of asylum seekers than other Member States, e.g. the northern ones. Thirdly, it was the issue of sending asylum seekers back to ‘safe third countries’. In an EC Member State, the asylum seeker was guaranteed processing of their application. In a third country, this may not be the case (Hurwitz, 1999, pp. 649-650). This could counteract the goal of preventing refugees in orbit. Some of these worries were attempted rectified in the later revisions of the Dublin Convention, but the issue of heavy burdens on Member States located at the front lines and on migrant travel routes remains largely unsolved.

The first revision of the Dublin Convention happened under the Treaty of Amsterdam. This treaty was signed in 1997, and entered into force in 1999. The treaty of Amsterdam moved the policy area of migration and asylum from the so-called third pillar to the first pillar. Up until this point, cooperation on migration and asylum had been purely intergovernmental through the Council. The Treaty of Amsterdam and the shift to the first pillar marked the transition to

communitarisation of AFSJ policy, giving the supranational EU institutions more power (i.e. the Commission and the EP). The Commission gained a more prominent role in its right of initiative, and negotiating with third countries on migration and asylum issues (Boswell, 2003b). The Council stood with decision making power, and for a five-year transitional period took decisions by unanimous voting after consultation with the European Parliament.

One of the main objectives of the Treaty of Amsterdam was to create a common area of freedom, security and justice. To this end, Schengen and the Dublin Regulation were integrated into the Treaty (European Council on Refugees and Exiles, 2006, p. 9). The Dublin Regulation (Dublin II) replaced the Convention in order to make it an official instrument for the EC, making it possible to create defined and harmonised rules and mechanisms in all Member States for the system to be applied effectively. One of the mechanisms created for this purpose was the European Dactyloscopy (EURODAC) system. This is a system that keeps track of all asylum seekers over 14 years, by systemising fingerprints, in order to establish which Member State the asylum seeker first applied for asylum. Dublin II's hierarchy of criteria to establish responsibility for an asylum application also slightly changed. The first criterion now stated that responsibility was assigned to the Member State in which the asylum applicant had a family member, increasingly taking into account the asylum seeker's interest (European Council on Refugees and Exiles, 2006, p. 9).

Further developments within asylum and migration policy were set out at the European Council Summit of 1999 in Tampere (Finland). Here, the first European Council Programme on asylum and migration was laid down. The Programme set out the development of a common asylum and migration policy for the next years. In this Programme, an external approach to asylum was presented. It was argued that AFSJ policies should be more closely linked to foreign affairs policy on the grounds of internal security (Koutrakos, 2010, p. 140). Hence, a closer cooperation with transit- and origin countries was needed. This entailed efforts to remove political and economic conditions acting as incentives for people to seek asylum in the EU. One of the priorities were to assist neighbour countries achieve adequate protection standards for refugees (Uçarer, 2013, p. 289).

Another point on the agenda was to eventually commit to a Common European Asylum System (CEAS). This entailed common standards for processing asylum claims and applications, and common rules for refugee recognition. Common minimum standards for conditions for refugees and rules for family reunification were also to be established (Uçarer, 2013, p. 289).



Following the Kosovo crisis in 1999, which led to a massive influx of refugees into EC countries, the Temporary Protection Directive (Council Directive 2001/55/EC of 20 July 2001) was established. The Directive aimed at giving temporary protection to people in the event of mass influx of asylum seekers not able to return to their home country (Council of the European Union, 2001). However, to the date of writing this, the Directive has never been activated, despite the mass influx of Syrian refugees into the EU during the refugee crisis (Directorate General for Internal Policies, 2016, p. 21).

Another initiative during the Treaty of Amsterdam was the European Refugee Fund (ERF), established in 2000 with the intention of financially relieving the Member States experiencing disproportionate pressure regarding asylum seekers (Council of the European Union, 2000). The fund would assist bearing the consequences of receiving refugees, such as financial aid in integration measures (E. R. Thielemann, 2005, p. 808). The fund was also to provide financial aid in the case of temporary protection measures in cases of mass influx. In addition to the ERF, there was the European Fund for the Integration of Third-Country Nationals, the External Borders Fund aimed at funding control of external borders and management of migration flows, and lastly the Return Fund, funding returns of illegal immigrants. These funds were in 2014 merged into the Asylum, Migration and Integration fund (AMIF), with a budget of 3,137 million euro for the period 2014-2020 (European Commission, 2011b).

At the European Council Summit in Brussels 2004, the Tampere Programme was replaced with the adoption of the Hague Programme (European Council, 2005). The Hague Programme set out the priorities for AFSJ policy from 2004-2009. It built on the progress made since the Tampere Summit of 1999 (European Council, 2005, p. 1). The Hague Programme especially emphasised the need to ensure fundamental rights for asylum seekers as set out by international law, such as the Geneva Refugee Convention. In light of the events of 11 September 2001, the need to handle terrorist threats was intensified. This consequently called for a common approach to issues such as illegal migration, trafficking and smuggling of human beings, terrorism and organised crime (European Council, 2005, p. 1; Uçarer, 2013, p. 290). The need to increase the protection of the external borders was therefore highlighted. This resulted in the creation of Frontex. Frontex is an agency providing additional technical support for EU countries facing severe migratory pressure (European Union, 2018). Their responsibilities consist mainly of training of border authorities, conducting joint operations of specially trained staff to assist border areas in need of additional support, and providing

technical equipment (such as aircrafts and boats), as well as gathering information and conducting research relevant to border authorities.

In addition to enhancing border control, the interest of cooperation with third countries increased. This interest was outlined by the European Council in the Tampere Programme, and further amplified during the Hague Programme. In 2005, the Global Approach to Migration and Mobility (GAMM) was established by the Commission, constituting the overarching framework for the external dimension of EU migration and asylum policy (European Commission, 2011a). GAMM aimed at developing a strategic policy towards relevant third countries regarding asylum and migration, in particular with the Southern and Eastern neighbour countries, as well as the enlargement countries. Countries of origin and/or transit were most important for the EU to cooperate with.

Since 2000, the Council of the European Union (from now on referred to only as ‘the Council’) increasingly authorised the Commission to negotiate with third countries on bilateral cooperation. This included readmission agreements, visa facilitation and mobility partnerships (Cassarino, 2011, pp. 191-206). The bilateral cooperation could be based on a number of different instruments or frameworks. The most tangible categories were Association Agreements and Partnership and Cooperation Agreements with provisions on the area of asylum and migration, such as commitments on mobility, visa facilitation agreements and return and readmission agreements<sup>5</sup> (European Commission, 2011a; Sterkx, 2010). A second area of cooperation where the EU could exert influence on asylum and migration towards third countries was in the pre-accession and enlargement processes. Thirdly, the EU also established liaison officers in third countries – mainly at border sites. These operated to assist on issues of migration such as asylum procedures, border security, airport checks, and visa issuing. They also assisted in capacity and institution building through training personnel, building or improving asylum systems or transfer of technical equipment. Finally, the EU encouraged third countries to ratify and implement international conventions, such as the 1951 Geneva Convention on Refugees and Stateless Persons and the European Convention on Human Rights (Sterkx, 2010, pp. 122-123).

Since the creation of the Global Approach to Mobility and Migration, the EU has promoted more extensive frameworks specifically for bilateral cooperation on migration. The

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<sup>5</sup> Readmission agreements set out criteria and obligations for third countries on the readmission into their country of people (of origin or of third-countries) who do not fulfil the conditions of entry into an EU Member State (European Parliament, 2018, p. 8).

two main frameworks were Mobility Partnerships (MP) and Common Agendas on Migration and Mobility (CAMM). MPs provided a framework for dialogue and practical cooperation between the EU and third countries on migration and mobility issues of common concern. These partnerships were concluded with third countries with effective readmission mechanisms already in place. CAMMs were concluded between the EU and third countries to agree on common recommendations, targets and commitments on migration. This framework did not necessarily require negotiating visa facilitation and readmission agreements (European Commission, 2011a, p. 11). At the time of writing this, only Nigeria has a Common Agenda on Migration and Mobility with the EU. Several countries have concluded MPs with the EU. Most of them are Eastern European, but also Cape Verde and Morocco have concluded MPs.

Aside from CAMMs and MPs, bilateral agreements on readmission with third countries were emphasised by the EU (Cassarino, 2011). At the time of writing, 17 readmission agreements have been concluded. Many of the countries that first concluded readmission agreements with the EU were Central Eastern European countries with prospects of joining the EU. In exchange for the conclusion of such agreements, the EU often used visa facilitation as an incentive (Cassarino, 2007). These countries desired access to an easier way to travel to the EU through visa facilitation. However, in addition to the exchange of visa facilitation for the conclusion of readmission agreements, the EU demanded certain criteria to be fulfilled. The EU stated that “[...] progress is dependent on these countries implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration, and strengthening their administrative capacity in border control and security of documents” (Council of the European Union, 2003, p. 16). The EU used this opportunity to make reforms in domestic justice and home affairs in the countries in question, making the accession process less strenuous, as some reforms would already be in place before the accession (Trauner & Kruse, 2008). Readmission agreements made with accession countries were often less complicated and lengthy than the readmission agreements with Mediterranean countries. It can be argued that they might not have the same incentives to cooperate as the accession countries, who operate with the expectation of gaining benefits following their accession into the EU (Cassarino, 2007).

The vision of a common asylum system was reinforced in the Treaty of Lisbon in 2009 (European Parliament, 2018, p. 3). It also reinforced the role of EU institutions by moving the asylum and migration policy under the ordinary legislative procedure, giving the European Parliament co-decision power. The European Council held co-decision power by qualitative

majority voting, although an informal norm of consensus voting still persisted (Trauner, 2016, p. 320). In addition to this, the role of the Court of Justice of the European Union gained competence within ASFJ policy. However, the developments of EU migration and asylum policy were strongly tainted by a status quo, and the Council was reluctant to give in to the Commission and the EP's calls for more liberal and harmonised rules (Trauner, 2016). The Council insisted on compromises that were close to its position, culminating in a near status quo.

The Stockholm Programme replaced the Hague Programme, and was concluded in 2009. The title of the Programme read: "The Stockholm Programme - An open and secure Europe serving and protecting the citizen" (Council of the European Union, 2009, p. 1). The Stockholm Programme set out the priorities of the AFSJ between 2010-2014. With the steady rise of migrants coming to Europe, the European Council's Stockholm Programme placed particular focus on security. It continued the focus on fundamental rights, but with a particular focus on the European citizen, promoting an internal security strategy (Uçarer, 2013, p. 290). To achieve this, an emphasis was placed on the need to increase the external dimension of asylum and migration policy.

The Stockholm Programme also emphasised the need for solidarity, especially with those countries facing particular pressure regarding the amount of asylum seekers (European Parliament, 2018, p. 4). One way of showing solidarity to the countries under pressure of asylum seekers was to find a solution to distribute the burden more equally. Relocation of asylum seekers from these particular countries to other Member States under less pressure was a suggested solution. The EU had little experience with relocation programmes (Trauner, 2016; Tsourdi & De Bruycker, 2015). The Commission together with the EP made efforts to establish permanent relocation measures, but was met with opposition by the Member States through the Council (European Parliament, 2012). In 2010, the Commission published a study on the feasibility of establishing a mechanism for relocation of people in need of international protection within the EU (European Commission, 2010). There was a general consensus among the Member States that there was indeed an uneven distribution of asylum burdens in the EU. However, their opinions differed as to why this was the case, and what the best solution would be. Only a limited number of the Member States were of the opinion that relocation programmes were the best solution. Many preferred a solution based on policy harmonisation, technical and financial assistance, or a combination of these. Approximately half of the Member States were

also explicitly against the relocation of asylum seekers, and were more lenient to a relocation scheme only for refugees (European Commission, 2010, p. VI).

The Return Directive set out common procedures for the return of irregular migrants on EU territory (European Parliament and Council of the European Union, 2008). It was an important development during the period of the Stockholm Programme, entering into force in 2010. As opposed to the proposed relocation measure, this directive was being heavily advocated by Member States, and the EP was the more sceptical party (Trauner & Ripoll Servent, 2016, p. 1426).

In order to make it easier for Member States to unify their asylum policies with EU policy, the European Asylum Support Office (EASO) was established in 2010, and was fully functioning by 2011 (European Parliament and Council of the European Union, 2010). The Stockholm Programme also saw the implementation of Dublin III, which further developed the method of effectively establishing responsibility of asylum applications. It also included measures aimed at improving the rights of the asylum applicants (European Parliament and Council of the European Union, 2013). However, an improvement on the even distribution of asylum seekers was still not established, despite calls from the Commission and the EP to suspend transfers if a Member State was over-burdened (Trauner, 2016, pp. 316-317). These calls were based on landmark rulings by the European Court of Human Rights and the Court of Justice of the European Union concluding that Dublin transfers to Greece would lead to degrading and inhuman treatment<sup>6</sup>.

### **Since the Stockholm Programme**

The Stockholm Programme expired in 2014. From there, the European Council set out guidelines for the legislative and operational planning within the area of freedom, security and justice for the period of 2014-2020 (European Commission, 2014). This no longer constituted a European Council Programme, but rather a set of guidelines on how to transpose, implement and harmonise the existing legal instruments and measures (European Parliament, 2018, p. 9).

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<sup>6</sup> ECtHR ruling; *M.S.S. v. Belgium and Greece*, and ECJ rulings; *N.S. (C-411/10) v. Secretary of State for the Home Department*, and *M. E. and Others (C-493/10) v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*.

A top priority was to fully transpose and implement the Common European Asylum System, which had been developing since the Tampere Summit of 1999.

EU's migration and asylum policies have grown to become an intricate system of internal and external measures, gathered under the Area of Freedom, Security and Justice. At the core of EU asylum and migration policy lies the Schengen Area. The Schengen Area today comprises of most EU Member States, with the exception of Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom<sup>7</sup>. In addition to these states, Iceland, Norway, Switzerland and Liechtenstein from outside the EU are also members of the Schengen Area (Migration and Home affairs, 2018c). There exists a single set of common rules of visa requirements, external border checks of persons and entry requirements to account for the lack of internal border control (Migration and Home Affairs, 2018a). This ensures access for those who have a legitimate interest to enter the EU, as well as keeping out those who do not. To make this cooperation easier, sharing of information on visa data (Visa Information System) and suspected criminals (Schengen Information System) is conducted through information sharing mechanisms.

The main feature of EU asylum policy is the Common European Asylum System. CEAS has developed to consist of five core pieces of legislation. First, the Asylum Procedures Directive (Council Directive 2005/85/EC of 1 December 2005) aims to ensure good, fair and quick asylum decisions. Greater protection of unaccompanied minors and victims of torture is emphasised. Second, the Reception Conditions Directive (Council Directive 2003/9/EC of 27 January 2003) aims to ensure humane reception conditions for asylum seekers in the EU. It also points out that detention should only be applied as a last resort measure. Third, the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004) sets out the grounds for granting international protection. Fourth, the Dublin Regulation (III) establishes the State responsible for examining the asylum application. Fifth, the EURODAC Regulation allows for law enforcement to access the EU database of fingerprints of asylum seekers in order to cooperate on preventing and investigating crimes (Migration and Home Affairs, 2018b).

To sum up, the EU's policy on asylum and migration has undergone significant institutional changes and policy developments since the 1980s. This has led to a communitarisation of the policy area. However, the Council has maintained a leading position, as the Member States have kept interests of maintaining competence regarding security. This

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<sup>7</sup> At the time of writing this, Bulgaria and Romania are in the process of joining the Schengen Area.

has led to a conflict of interests of internal security and protection of refugees concerning human rights, as we see in the reluctance to change the Dublin Regime despite calls from the ECtHR and the CJEU (Trauner, 2016). Rather leaning towards restrictive policies by externalisation, this is also a measure prone to conflict of human rights (Lavenex, 2001). As the refugee crisis has emphasised, the existing policy regime remains critically flawed. In particular, its incapability of a sustainable sharing of responsibilities (European Commission, 2016d). This has led to an inconsistent response both from the Member States and consequently the EU as a whole, as will be addressed in chapter 3 of this thesis.





## **Chapter 3: EU actors and the refugee crisis**

The refugee crisis led to a multitude of responses both from EU Member States and EU institutions. These responses were likely to form the EU's choice of action, and is therefore relevant to address. This chapter will analyse the main weaknesses of EU asylum and migration policy as emphasised by the refugee crisis, as well as the EU Member States' reactions to the refugee crisis. Furthermore it addresses which actions the EU took in response to the refugee crisis.

### **The Crisis of the Dublin Regulation and Member States' reactions**

In a European Commission evaluation of the Dublin III Regulation, it was pointed out that the Regulation was not designed to deal with situations of mass influx, ultimately resulting in the failure to achieve its objective under the refugee crisis (Maas, Jurado, Capdevila, Labayle, & Hayward, 2015, p. 4). With the increasing pressure on certain frontline Member States of the EU, their facilities and ability to keep and process asylum seekers deteriorated in accordance with the rising numbers of migrants arriving. Certain countries were no longer able to uphold proper standards for their facilities, as they were over-crowded. This took a toll on the functioning of the Dublin Regulation.

It became problematic to perform transfers under the Dublin Regulation. The asylum seekers could potentially be sent back to a first country of entry without the means to properly keep and process the applicant. Rulings by the Court of Justice of the EU (joined cases C-410/10 and C-493/10) and the European Court of Human Rights (*M.S.S vs. Belgium and Greece*) concluded that the asylum seeker would face risks of inhuman and degrading treatment upon returning to Greece (Trauner, 2016). This was an issue even before the refugee crisis, but was undoubtedly worse after 2015. The Commission stated already in 2007 that “ [...] the Dublin System may de facto result in additional burdens on Member States that have limited reception and absorption capacities and that find themselves under particular migratory pressures because of their geographical location.” (European Commission, 2007, p. 10).

Even before the refugee crisis, some cases of returns under the Dublin Regulation were deemed in breach of the European Convention on Human Rights (ECHR) (E.g. *Sharifi and Others v. Italy and Greece* (2014), *Tarakhel v. Switzerland* (2014)). A ruling by the European

Court of Human Rights (ECtHR) as early as 2011 held that the transfer of an individual under the Dublin Regulation from Belgium to Greece was in violation of Article 3 and 13 of the ECHR (*M.S.S. v. Belgium and Greece*). The Court of Justice of the European Union (CJEU) confirmed this ruling in *N.S. (C-411/10) v. Secretary of State for the Home Department and M. E. and Others (C-493/10) v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*. Here it was stated that

[...] they cannot be unaware that systemic deficiencies in the asylum procedures and in the reception conditions of asylum seekers [...] amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman and degrading treatment. (Court of Justice of the European Union, 2011)

These landmark rulings influenced the later application of the Dublin Regulation, contributing to ensure the consideration of human rights in transfer cases. Consequently, transfers to Greece were suspended.

Furthermore, as previously mentioned, the Dublin Regulation was criticised early on for its incapability of distributing asylum seekers evenly. This flaw was further emphasised when the number of asylum seekers increased drastically in 2015. For Greece and Italy, the use of the Dublin Regulation would have entailed handling approximately 1 million asylum seeker applications in 2015 alone (UNHCR, 2016a). Had the Dublin Regulation not been suspended for Greece, they would have had the responsibility for over 850,000 of these. This would not have been sustainable. The lack of a joint response from the EU on this area resulted in Member States starting to overlook the Dublin Regulation all together. The Member States most heavily influenced by the large influx of asylum seekers would neglect to register the asylum seeker's entrance into their country, and send them through to the next (Directorate General for Internal Policies, 2016, p. 48). Furthermore, Germany ceased to return Syrian refugees to the first point of entry under the Dublin Regulation. By doing this, they blatantly disregarded the rules of the Dublin Regulation (Dernbach, 2015).

Member States were now looking for an alternative way to manage the flow of refugees. As the EU did not provide a rapid, common response, many considered it necessary to take the matter into their own hands. The refugee crisis led to a polarisation of opinions on what actions to take. On the one hand, there were those welcoming refugees with open arms, on the other those deeming it was neither feasible nor desirable to take in large amounts of refugees (Guiraudon, 2018). There were several factors pushing people towards the latter category. The large, uncontrolled influx of refugees was one of them. The close relation constructed between

migration and security made many weary of the notion of thousands of migrants entering Europe. The upsurge of terrorist attacks experienced in Europe in recent years did not weaken this notion. Neither did the economic crisis in Greece that threatened the entire EU economy. In many countries, this ultimately led to an upsurge in support of right-wing and nationalist populist parties, representing anti-immigration and anti-EU sentiments (Mudde, 2016). As we have seen, right-wing parties have been prominent in national elections the past couple of years in France, Netherlands and Germany, among others.

Many European countries opted for the tightening of asylum legislation, leaning to more restrictive policies. This contributed to a ‘race to the bottom’, all trying to make their respective country less attractive to the refugee in the hopes they would go elsewhere. Given the EU CEAS, there were certain standards every country was required to maintain. However, some Member States lowered their standards to the minimum requirements the System allowed (Directorate General for Internal Policies, 2016; Salazar, 2017, p. 94). Many countries re-introduced border controls, which is an emergency method allowed under the Schengen Agreement. Some countries, such as Macedonia and Hungary, took the border controls to the next level by setting up razor-wire fences to keep migrants out, giving rise to much controversy in European countries. This in order to divert the refugee flow to other countries (Directorate General for Internal Policies, 2016, p. 38; Trauner, 2016, p. 320).

Germany quickly became known to be the main opposition to other countries’ leading restrictive policies. Germany had a liberal asylum policy and was a popular destination country for asylum seekers.. In 1992 during the Bosnian refugee crisis, Germany led a similar liberal asylum policy. They received over 438,000 asylum applications. This constituted more than 62 percent of all applications registered in Europe at the time (E. Thielemann, 2008, p. 4). In 2015, Germany received a total of 441,800 first time asylum applicants. About 150,000 people (absolute number) were granted refugee status, levelling with the United States who granted approximately the same number. However, in 2016 the number of first time asylum applicants in Germany was almost tripled that of the United States (Eurostat, 2016a, 2017a; OECD, 2017, p. 31). With approximately 720,000 applications registered in Germany in 2016, it was the country with the most applications in proportion to its population.

Germany was an attractive destination country to begin with (Havlová & Tamchynová, 2016). Moreover, with Germany being the first country to suspend the Dublin regulation for Syrian refugees, leading an open-door policy, their popularity increased even further (Dernbach, 2015). Chancellor Angela Merkel was the leader of this liberal attitude towards

asylum seekers. Her declaration on 31 August 2015 “We can do it!” (*Wir schaffen das!*) became a well-known slogan symbolising Germany’s stance in the refugee crisis, inspiring and urging governments of Europe to do the same (Guiraudon, 2018, p. 153). However, Merkel’s liberal policy was also met with heavy criticism, mainly from the far right-wing. The newly formed party ‘Alternative for Germany’ (AfD) was the epitome of Merkel’s antithesis, representing a harsh anti-immigrant and anti-Muslim agenda and anti-European sentiments (Mushaben, 2017, p. 98). After a terrorist attack in Berlin in 2016 that left 12 dead, the Chancellor was met with major criticism. The criticism was based on her open-door policy, claiming it had led terrorists into the country. However, at the 2017 elections, Merkel was re-elected as Chancellor, signifying the support she still maintained.

Sweden initially held a similar position as Germany in executing an open-door policy towards asylum seekers. In 2015, Sweden received 156,110 first time asylum applicants. This, however, changed when the pressure of the refugee crisis proved too high. Sweden too eventually resorted to the EU minimum standards for migration and asylum (Jacobsen, 2015), resulting in the number decreasing to 22,330 applicants in 2016 (Eurostat, 2016a, 2017a).

### **Reforms under the EU Agenda on Migration**

The widely different responses by the Member States called for unified action by the EU. One of the most prominent common actions by the EU during the refugee crisis was the Agenda on Migration, presented by the Commission on 13 May 2015 with the support of the EP and the Council (European Commission, 2015b, p. 2). This Agenda was already planned, but the incidents in the Mediterranean prompted it being set to action earlier than expected. In 2014, one saw the death of 3279 migrants in the Mediterranean trying to reach Europe. In 2015, there were 3771 fatalities by the end of the year (International Organization for Migration, 2016). Troubling stories of the harsh travel routes for migrants traveling to Europe flourished on news sites and were shared vigorously through social media. Particularly prominent was the picture of the lifeless three-year-old Alan Kurdi, washed ashore on a beach in Turkey. He was one of 12 people who died in an attempt at reaching the Greek island of Kos (Smith, 2015). Incidents like these pushed European leaders to look for adequate responses to the situation.

With the Dublin Regulation crumbling and facilitating an even more unequal distribution, the EU saw a desperate need for a mechanism to compensate for this. Through the

Commission's Agenda on Migration of 2015, two schemes were set out to contribute in resolving this; the relocation scheme and the resettlement scheme.

In the Agenda on Migration it was clearly stated that the EU was in need of a permanent system for responsibility sharing of refugees and migrants during high influxes (European Commission, 2015b, p. 4). An emergency relocation mechanism was therefore adopted on 14 September 2015 (Council of the European Union, 2015a), followed by a second decision 22 September further extending the relocation mechanism. These measures were referred to as the relocation scheme. The scheme was based on Article 78 (3) of the Treaty on the Functioning of the European Union (TFEU). This article states that:

In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned.

The relocation scheme was in other words part of the EU's emergency response. It aimed at relieving the Member States most heavily affected, notably Italy and Greece, by relocating refugees from these countries to other Member States. The EU provided financial support for the relocation.

Hotspots were created in Italy and Greece to help with the relocation (European Commission, n.d.). The creation of hotspots was suggested by the Commission in the Agenda on Migration, as a tool to help relieve pressure on frontline Member States by assisting them in swiftly identify, register and fingerprint incoming migrants. People in need of international protection would be swiftly relocated to other Member States. The hotspots would also receive help with coordinating returns of irregular migrants. These hotspots would receive help from EASO, Frontex and EU Judicial Cooperation Agency (Eurojust) who would work with the local authorities to help fulfil their obligations under EU law (European Commission, 2015b).

The relocation scheme was a promising proposal for the Member States struggling with overcrowded asylum facilities, however, the scheme was largely deemed a failure. The relocation distribution was calculated by “ [...] a redistribution key based on criteria such as GDP, size of population, unemployment rate and past numbers of asylum seekers and of resettled refugees” (European Commission, 2015b, p. 4). The intended number of relocations was 40,000, but disagreement among the Member States resulted in the initial number being roughly 32,000 (Council of the European Union, 2015c). Later, a second decision was made,

determining the relocation of 120,000 additional asylum seekers. Although the proposal was met with opposition from certain Member States, notably Hungary, Slovakia, Romania and the Czech Republic, the Council Decision went through on the grounds of the qualitative majority vote (Salazar, 2017; Trauner, 2016). The Prime Minister of Hungary, Viktor Orbán, was leading in the protest of the relocation scheme. As a far-right nationalist, he opposed the relocation scheme on grounds of anti-Islamic sentiments, in fear the relocation of immigrants with Islamic ties would undermine “European Christianity”. Many feared the stability and security of their country would be at risk by mass relocating asylum seekers. Therefore, not all countries were willing to follow through on the EU’s proposals, but rather act unilaterally, increasing border controls or even refusing to accept asylum seekers (Salazar, 2017, pp. 93-94).

Hungary and Poland have up to the time of writing refused to participate in the relocation scheme (European Commission, 2017c). Others have participated, but not fully respected their legal obligations in terms of relocations to their countries, resulting in infringement procedures by the Commission. Several countries have shown reluctance to relocate sufficient numbers, and has received calls from the Commission to increase their efforts (European Commission, 2017b). In fact, only two countries, Malta and Finland, are on track to fulfil their obligations (European Commission, 2017c).

For the reasons above, the progress in relocating asylum seekers was slow. As of November 2017, only 33,846 relocations had been executed (European Commission, 2018d). The Commission argues, however, that the EU-Turkey Agreement has contributed to a 96% decrease in arrivals to Greece, and the majority of the migrants arriving in Italy not being eligible for asylum, the number of persons to be relocated has turned out to be much lower (European Commission, 2017d). The Commission further encourages Member States to support Greece and Italy in relocating refugees, as they still remain under high pressure of the refugee flow. The Commission has proposed a permanent relocation mechanism, but this proposal is at the time of writing being reviewed by the Council.

In addition to setting up a relocation scheme for the asylum seekers already on EU soil, the Commission proposed to set up a resettlement scheme for people in need of international protection outside the EU (European Commission, 2015b). The intention of this was to counteract the use of smugglers and traffickers as a measure to reach a safe country. The initial programme had the goal of 22,500 resettlements. The implementation of the resettlement scheme was more successful than the relocation scheme. By the end of 2017, 18,563 of the 22,500 had been resettled (European Commission, 2017e). A new scheme for 50,000 additional

resettlements is in progress, as well as a permanent Union Resettlement Framework by the Commission, proposed in July 2016, which is to replace the current resettlement schemes (European Commission, 2017e). Even though the scheme was a success in that it reached the resettlement goals, the number of resettlements was relatively low compared to the millions of refugees fleeing conflict.

The refugee crisis called for heightened security of the EU's external borders. On 14 September 2016, a regulation establishing the European Border and Coast Guard Agency was adopted, and entered into force 6 October the same year (European Parliament and Council of the European Union, 2016). This Agency was part of an expansion of Frontex' mandate, and replaced the previous name (European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union). The aim was to reinforce the security of the external borders of the EU, as well as assist in handling migratory pressures. Their main task was monitoring migratory flows, provide operational and technical assistance to Member States, assist in search and rescue missions, as well as assist in returning migrants without the right to stay in the EU (European Commission, 2016c). Frontex' budget was also considerably reinforced already in 2015 in order to address the refugee crisis (European Commission, 2016c). Rescue operations such as Poseidon and Triton<sup>8</sup> were reinforced with tripled resources and assets in 2015 following the refugee crisis. In 2017 alone, Frontex contributed to save more than 33,000 people in the Central and Easter Mediterranean (Frontex European Border and Coast Guard Agency, 2017).

Cooperation with third countries of transit and origin was also one of the EU's immediate actions through the Agenda on Migration. In order to prevent 'hasardous journeys', the EU would cooperate with transit and origin countries by setting up Regional Development and Protection Programmes. Migration was to become part of ongoing Common Security and Defence Policy (CSDP) missions in several African countries in order to strengthen border management in those countries. Furthermore, the Commission proposed to set up 'multi-purpose centres' in third countries. These centres would provide migrants with information to create a realistic picture of the likely success of their journeys, and offer assisted voluntary return options for migrants without protection needs. The Commission also called for more

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<sup>8</sup> Joint Operations Poseidon (Greece) and Triton (Italy) are Frontex led operations with the aim to assist the Member States involved with border surveillance, save lives at sea, and assist in carrying out returns and readmissions (European Commission, 2016a).

frequent application of the Return Directive. To increase this application, the EU would ensure that third countries fulfilled their obligation to take back their own nationals that were not in need of protection in Europe. The EU would help third countries fulfil these obligations by offering capacity building for the management of returns. Furthermore, the Commission would prioritise concluding readmission agreements with the main countries of origin (European Commission, 2015b).

In addition to coming up with repairing mechanisms to make up for the deficiencies of the Dublin Regulation, an actual reform of the Dublin Regulation is under development. The Dublin III Regulation is to be replaced by the Dublin IV Regulation (European Commission, 2016d). This Regulation would among other things provide a corrective mechanism in case of disproportionate pressure on Member States. This would ensure fair responsibility sharing. This fairness mechanism would entail a system that automatically establishes whether a country is under disproportionate pressure. If that is the case, applicants would be relocated to another Member State. Whether disproportionate pressure is taking place would be established by referencing to a country's size and wealth. A country would be able to not partake in the relocation, and decline to receive applicants under the fairness mechanism. Consequently, it would have to make a solidarity contribution of €250,000 per applicant it would otherwise have been responsible for under the fairness mechanism. This money would go to the Member State that are instead determined as responsible for examining those applications. These reforms are at the time of writing under development (European Commission, 2018a).

To sum up, the multitude of responses from EU Member States was likely partially a consequence of the lack of a complete European policy towards asylum and migration. The response by the EU is categorised as being emergency measures, in lack of established measures for the handling of large influxes of asylum seekers. The Member States' strong position, e.g. through the Council, and polarised positions, made it difficult for swift and common actions in the EU. One example is the proposal and implementation of the relocation scheme within the EU, which was largely unsuccessful. Other measures were preferred, such as the hotspot scheme, enhanced border security, and enhanced cooperation with countries of transit and origin. This brings us to the EU-Turkey Agreement, and the EU's motivation behind it.



## **Chapter 4: Motivation for the bilateral agreement**

The EU-Turkey Agreement represents a shift in EU asylum and migration policy in that the nature of the Agreement is unlike any previous bilateral cooperation agreement. In this chapter, the thesis quickly outlines how the EU-Turkey Agreement differs from previous bilateral cooperation the EU has conducted, distinguishing its unique traits. Furthermore, the main developments of the EU's relationship with Turkey are laid out, and insights into how the agreement between the two was concluded is provided. Then, an analysis of its implementation is conducted. Lastly, the thesis explores and discusses what motivated the EU to conclude the Agreement with Turkey.

### **The EU-Turkey Statement; an exception to the rule**

As previously stated, the EU has increasingly led extensive bilateral cooperation with third countries on the area of migration and asylum. The nature of the cooperation has ranged from regular dialogues with third countries about migration and asylum, to concluding extensive cooperation agreements such as CAMMs and MPs. North-African countries, e.g. Tunis and Morocco, have concluded MPs with the EU and have consistent partnerships in the field of migration, mobility and border security (European Commission, 2015c). However, these partnerships are part of the EU's long term strategy under their Global Approach to Migration and Mobility. Whereas the EU-Turkey agreement by contrast is by definition a temporary emergency measure (Council of the European Union, 2016a).

Libya is the North-African country perhaps most comparable to Turkey in the context of the refugee crisis. It has been massively affected by the crisis, and is a popular transit country *en route* to Europe, as well as being an unstable country. Also similar to Turkey, it has not had any official partnership with the EU on migration and asylum in the past. But the EU has not made a similar deal with Libya as with Turkey, on the grounds that the country according to EU institutions is too unstable, and the situation is not the same as in Turkey (European Parliament, 2016; Nielsen, 2017). Instead, Libya has received help from the EU to handle the refugee crisis in other ways. The EU help return refugees from Libya to their country of origin. Additionally, they have been receiving financial support, mainly through the EU Emergency Trust Fund for Africa, to help manage the refugee flow and improve their refugee facilities and the conditions for refugees. Since 2014, roughly 200 million euros have been mobilised by the

EU to improve refugee facilities and build the capacity of migration and asylum institutions, including the Libyan coast guard (European External Action Service, 2018).

Nonetheless, the EU-Turkey Agreement represents a cooperation mechanism unlike anything seen previously. First of all, the nature of the agreement is somewhat unusual. Legal scholars have analysed the agreement without being able to conclude exactly what kind of deal it constitutes (Cherubini, 2017; Peers, 2016). The legal basis is unstable, and there are several issues regarding its implementation, which is elaborated on below (Dimitriadi, 2016). Even the denomination, ‘the EU-Turkey Statement’, is unclear regarding what the agreement actually entails. Its content does not provide a clear answer to this either (Cherubini, 2017, pp. 40-43). Furthermore, the one in – one out scheme is completely uncommon, in that it offers to take in a Syrian refugee from Turkey for every refugee Turkey takes back from Greece. The fact that the scheme is based on nationality is unique (Cherubini, 2017, p. 37). The EU has also agreed to resettle no more than 72,000 Syrians, regardless of how many Syrians are sent back to Turkey. The offer of 6 billion euros from the EU in addition to visa facilitation, re-opening of accession talks and the ‘one in-one out’ scheme is unprecedented for a bilateral agreement on migration, and is therefore viewed as an extraordinary measure by the EU (Haferlach & Kurban, 2017). At the same time, Turkey – albeit compensated by the EU – will experience extreme pressure as the number of refugees they hold will grow drastically, making the Agreement less than ideal for them as well.

### **From unwanted accession country to crucial partner**

Turkey first applied for membership in the EU in 1959. They have been a candidate country for EU membership since 1999. Accession talks commenced in 2005, although a large number of EU Member States were opposed to Turkish membership (Phinnemore & İçener, 2016, p. 455). Since then, the EU-Turkey relationship has been tumultuous. The accession progress has been significantly slower than that of other accession countries. Phinnemore and İçener argue that this is partly due to the EU’s expansion of conditions to be met by accession countries, as well as the rise of compliance thresholds. However, they also argue that the specifics of Turkey’s candidacy is equally to blame for the slow progress (Phinnemore & İçener, 2016, p. 450).

The accession talks came to an almost complete halt in 2010. By that time, Turkey and the EU had only closed one of the 35 chapters of EU *aquis communautaire* that Turkey needs to adopt ahead of accession. Several of the chapters were blocked by the Council and certain

Member States. The halt of negotiations was in large part due to the EU institutions' criticism of lack of freedom of expression and of the press in Turkey. Certain Member States were more fundamentally opposed to Turkish accession. Among them were France, Cyprus, Greece and Germany (Pop, 2010). One of the main reasons for this opposition was the ongoing Turkish occupation of the northern parts of Cyprus (Ulusoy, 2016). Turkey was – and is still – the only country recognising this part of Cyprus being the Turkish Republic of Northern Cyprus. This is at the time of writing still one of the main obstacles of their accession to the EU (Haferlach, Tekin, & Wódka, 2017).

In 2012, the EU launched the 'Positive Agenda for Turkey', aimed at getting accession talks back on track after a period of stagnation (European Commission, 2012). The accession talks were reinvigorated in 2013 with the opening of Chapter 22 on Regional Policy and coordination of structural instruments, and later that same year the EU-Turkey readmission agreement was signed. The same year also saw the launching of the visa liberalisation dialogue (European Commission, 2015d). In the first half of 2015 EU-Turkey relations developed further through deeper cooperation on energy and trade.

The second half of 2015 – coinciding with the upsurge of the refugee crisis – marked significant advances in EU-Turkey relations. This advance was due the EU taking comprehensive initiatives to cooperate on migration. In September 2015, the Commission proposed adding Turkey to a list of countries considered 'safe third countries' (European Commission, 2015f). This list was intended to replace national lists of safe third countries within three years. When comparing Turkey to the other countries on the list considered safe<sup>9</sup>, significant differences are found. While the other countries were designated safe by between 6-9 EU Member States, Turkey was only designated safe by one. In addition to this, in 2014, the number of well-founded asylum applications in the EU by asylum seekers from the other countries ranged from 0.9% - 7.8%. This indicates that few of the people applying for asylum in the EU from these countries were in actual need of protection. Consequently, they could return to their home country, given that these countries were considered relatively safe. The rate for Turkey the same year was 23.1%, meaning over 1/5 of Turkish asylum seekers had legitimate reason to leave their country. The making of a common list of safe third countries was agreed upon by the co-legislators within the EU, however, which countries to include was

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<sup>9</sup> The other countries on the 'safe third countries' list were: Albania, Bosnia and Herzegovina, The Former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia.

not. In particular the inclusion of Turkey in such a list was highly contested (European Parliament, 2017). The making of the list ultimately fell through.

There were several reasons why the listing of Turkey as a safe third country was problematic. Turkey was not considered a safe third country by, among others, the Council of Europe (PACE, 2016b). After the attempted coup of 2016, Turkey was placed on a watch list by the Parliamentary Assembly of the Council of Europe, signifying the high risk of human rights breaches in the country. Turkey is part of the 1951 Refugee Convention, but it applies only to European refugees. Refugees from countries outside Europe stand without proper rights. Amnesty International and Human Rights Watch stated that Turkey had breached the principle of non-refoulement by deporting refugees from Syria, Afghanistan, Iraq back to their country (Amnesty International, 2015; Human Rights Watch, 2015). However, after the refugee crisis, Turkey implemented a temporary protection policy for Syrian refugees.

On 23 September 2015, at an informal meeting of EU heads of state or government on migration, it was emphasised that closer cooperation with Turkey was essential to stem and manage the migratory flows. At the EU-Turkey Summit on 29 November, a joint statement was agreed upon. It contained a number of shared commitments and actions in areas such as the re-energising of the accession process, visa liberalisation, humanitarian aid and economic relations (European Commission, 2015e). Among other things, Turkey agreed to improve border controls and conditions for refugees in return for EU financial aid. Included in the Joint Statement was the activation of the Joint Action Plan, which had been agreed upon on 15 October the same year (European Commission, 2015a). The Action Plan specifically addressed the refugee crisis and set out a number of collaborative efforts to be conducted by both parties. Three main objectives were set out. Firstly, the root causes leading to the massive influx of Syrians was to be addressed. Secondly, Syrians under temporary protection in Turkey needed proper protection and adequate living conditions. Thirdly, the strengthening EU-Turkey cooperation to prevent irregular migration flows to the EU was emphasised.

Cooperation with Turkey on the migration and refugee crisis continued, and a second EU-Turkey Summit was held on 7 March 2016. The implementation of the Joint Action Plan was discussed, and it was concluded that progress had been made, but the number of migrants entering Europe through Turkey was still far too high. Several proposals were made to address the refugee crisis, in particular the flow of migrants from Turkey to Europe. Many of the points in the upcoming EU-Turkey Agreement were discussed, such as the acceleration of visa liberalisation; additional funding from the EU to Turkey for refugee facilities for Syrians; new

chapters to be opened in the accession negotiations; the resettlement, for every Syrian readmitted by Turkey from Greek islands, of another Syrian from Turkey to the EU (European Council, 2016). However, German Chancellor Angela Merkel was the only strong advocate for such an agreement. Merkel's wish to externalise migration control to Turkey seemed to oppose her liberal views of European solidarity and open door policy. However, given the reluctance of other Member States to internally relocate refugees, leaving Germany with an increasingly unmanageable amount of refugees, her stance on the EU-Turkey Agreement is understandable. Hungarian Prime Minister Victor Orbán, Merkel's antithesis in her liberal stance towards refugees, was in strong opposition of resettling refugees from Turkey to the EU, consequently vetoing this proposal (Stupp & Gotev, 2016). Hence, a deal on the managing of refugees was not agreed upon at this meeting. However, Turkey committed to the rapid return of irregular migrants coming to Greece from Turkey. This was a significant development. In the words of President of the European Council Donald Tusk: "the days of irregular migration to Europe are over" (European Council, 2016).

A third EU-Turkey Summit was held on 17-18 March. It was here the renowned EU-Turkey Agreement was ultimately concluded, in the form of a Joint Statement on 18 March (Council of the European Union, 2016a). Turkish Prime Minister Ahmet Davutoğlu was Turkey's representative for the negotiations, and had cooperated closely with Merkel to reach the Agreement (Benvenuti, 2016; Karnitschnig, 2016; Karnitschnig & Barigazzi, 2016; Mushaben, 2017; Toygür & Benvenuti, 2016).

After the coup d'état attempt in Turkey on 16 July 2016, cooperation between EU and Turkey once again stagnated<sup>10</sup>. This was due to actions by President Erdoğan that have been heavily criticised both by EU Member States and the EU institutions. Following the attempted coup, President Erdoğan declared the country under a state of emergency, followed by the initiation of a purge of anyone he considered part of the attempted coup (Milan, 2016). Thousands of journalists, judges, academics and military and police officers were detained and incarcerated. Teachers had their licence revoked, and multiple universities were closed. One of his most shocking statements was the threat of re-imposing the death penalty. These events led

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<sup>10</sup> The night of 15 July 2016, media started reporting that military was now in control of Turkey. The coup was unsuccessful. No official coup leader has yet been established at the time of writing this. However, it is the Gülenists, a religious community named after its leader – a previous ally of Erdoğan - who are paying the consequences. President Erdoğan blames Gülen, and is purging the Turkish society of any elements connected to the Gülen movement. Gülen denies any connection to the coup (Milan, 2016).

to a halt in negotiations concerning visa liberalisation and access talks. The EU report on Turkey of 2018 further emphasised the deteriorating political situation and the poor state of fundamental and human rights (European Commission, 2018b). At the time of writing, with the continued strengthening of the authoritarian government in Turkey, its accession to the EU looks more remote than ever.

### **The EU-Turkey Statement – implementation of the agreement**

The implementation of the Agreement has been highly controversial. The deal was quickly criticised by civil society and international human rights organisations (Benvenuti, 2016). The Council of Europe and the UN were particularly worried about the legality of the deal. There are possible dire humanitarian repercussions of sending refugees back to Turkey, a country already overcrowded with Syrian refugees and with a questionable state of rule of law, democracy and human rights (Council of Europe Commissioner for Human Rights, 2016; Nielsen, 2016b; PACE, 2016a, 2016b). Even in 2016, in the words of the PACE Report of the Council of Europe, the Agreement “at best strain[ed] and at worst exceed[ed] the limits of what is possible under European and international law” (PACE, 2016b). The main criticism was the unofficial categorisation of Turkey as a safe third country following the implementation of this deal, a categorisation previously rejected by both EU institutions and external human rights actors. Consequently, the readmission of refugees to Turkey could arguably be a breach of the non refoulement rule, or mass expulsion<sup>11</sup> (PACE, 2016b; Poon, 2016). The EU, however, states that they oblige to international law, and that mass expulsions are not taking place. In the words of the Commission: “These measures are carried out strictly in accordance with the requirements of EU and international law, and in full respect of the principle of non-refoulement” (European Commission, 2017g, p. 5).

The EU-Turkey Statement consists of nine concrete points of action. For this thesis, these have been compressed to include only the essence of the nine points.

- 1) All new irregular migrants crossing from Turkey into Greek islands as of 20 March 2016 will be returned to Turkey, in accordance with EU and international law.
- 2) For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU.

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<sup>11</sup> Mass expulsion of refugees is a breach of Article 4 of the European Convention on Human Rights.

- 3) Turkey will take measures to prevent new sea or land routes from opening from Turkey to the EU.
- 4) Once irregular crossings between Turkey and the EU have been reduced, a Voluntary Humanitarian Admission Scheme will be activated.
- 5) The visa liberalisation process will be accelerated with the view of lifting visa requirements for Turkish citizens at the end of June 2016, provided all benchmarks have been met by Turkey.
- 6) The EU will all together fund Turkey with 6 billion euros under the Facility for Refugees in Turkey.
- 7) The work on upgrading the Customs Union will continue.
- 8) The accession process will be re-energised.
- 9) The parties will cooperate on improving humanitarian conditions in Syria (Council of the European Union, 2016a).

As for the functioning of the Agreement, the EU identifies three main objectives: “reducing both the number of persons arriving irregularly to the EU and the loss of life in the Aegean whilst providing safe and legal routes to the EU for those in need” (European Commission, 2017a, p. 4). Firstly, the deal seeks to discourage irregular migration to Europe. This objective is incorporated in the first and third point of the Agreement. The first point, returning all new irregular migrants from Greece to Turkey, decreases incentives for migrants to try to reach Europe. The third point binds Turkey to prevent new sea and land borders from opening, as migrants might look for other routes to Europe than crossing the sea.

The objective of discouraging irregular migration to Europe can be considered fulfilled, seeing as after the implementation of the Agreement, the number of people crossing the sea from Turkey to Greece has decreased by 97%. As of 26 March 2018, 2177 migrants have been returned from Greece to Turkey out of the 7,497 arrivals (European Commission, 2018c; UNHCR, 2018). Consequently, the number of lives lost at sea has also dropped, fulfilling also the second objective (European Commission, 2017a).

Thirdly, the Agreement seeks to deter human smuggling and prevent people from resorting to the dangerous and illegal routes across the Mediterranean and Aegean seas. As Turkey has struck down hard on smugglers, there has been a definite improvement on this area. However, some argue that there has not been provided sufficient safe and legal routes to reach Europe, which is essential to undermine the smugglers’ business model (Benvenuti, 2016, p. 90;

McEwen, 2017, p. 24). As there now are fewer ways of getting to Europe, the fear is that some might resort to even riskier measures to get there, such as through Libya.

The second point of the Agreement provides a possibility for resettlement from Turkey to the EU through the one in-one out scheme. Under the one in-one out scheme, the resettlement of Syrians from Turkey into the EU has progressed in a steady pace. In September 2017, almost 9,000 resettlements had been executed (European Commission, 2017g). In addition to this, the resettlement scheme through the European Agenda on Migration has had a particular focus on resettling from Turkey, Jordan and Lebanon (European Commission, 2017f). These resettlement schemes have made steady progress, and is on track to reach the goals set out, which is 34,400 pledges by 16 Member States. However, it can be argued that these numbers are relatively modest compared to the amount of refugees Turkey is hosting. The number of resettlements to the EU fades in relation to the number of refugees Turkey is currently hosting, which is estimated at 3.9 million.

The EU states that the Agreement has indeed been successful (European Commission, 2017a). However, how successful the Agreement has been depends on what goals are used as yardsticks for measuring any success. If decreasing the amount of asylum seekers that reach Greece from Turkey was the goal, the Agreement is an astonishing success. However, if the goal was to create safe routes for refugees, or raise humanitarian standards for refugees, it is doubtful that these goals have been achieved.

Not all points in the Agreement has seen much progress. Point four on creating a Voluntary Humanitarian Admission Scheme has not been realised, despite irregular migration being at an all-time low. This is a “system of solidarity and burden sharing with Turkey for the protection of persons forcefully displaced to Turkey as a result of the conflict in Syria” (Council of the European Union, 2017, p. 1). Neither has Turkey seen much progress on visa facilitation, the upgrading of the Customs Union, and re-opening of accession talks, incorporated in points five, seven and eight. This thesis has a focus on the EU’s motivation for the Agreement, not Turkey. However, these three points are likely main motivations for Turkey. The attempted coup in 2016 had major implications for these issues. The EP has called for the membership talks to be suspended. The visa liberalisation, initially promised by June 2016, has stood at a stand-still for over one year, with seven benchmarks remaining to be met (European Commission, 2017g). Consequently, President Erdoğan has threatened to scrap the whole agreement (Euractiv, 2017a; Nielsen, 2016a). Despite this, at the EU-Turkey Summit in Varna 26 March 2018 the EU and Turkey reiterated their commitment to continue cooperating (European Council, 2018).



## **The EU's motivation – the refugee crisis**

The previous sections have outlined the EU-Turkey relationship, and the implementation of the Agreement. The following sections analyse the EU's motivation for the Agreement. The EU-Turkey Agreement states to have been concluded “[i]n order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk” (Council of the European Union, 2016a, p. 1). The Agreement is largely portrayed by the EU as a deal to address humanitarian issues, preventing deaths at sea and human smuggling. However, this thesis argues that an equally important motivation was the EU's goal of resolving European challenges in the refugee crisis. In conclusion, the thesis argues that the EU-Turkey Agreement is the culmination of the failure of the EU to respond adequately to the refugee crisis, and its motivation is mainly based on self-interests of internal security.

To trace the EU's motivation for their Agreement with Turkey, one must go back to the beginning of the refugee crisis. Part of the problem the EU was facing when the refugee crisis came about was its own asylum and migration policy. The EU policies were not sufficient to deal with the massive influx. The Dublin Regulation stood out as a particular problematic part of EU asylum policy. It particularly burdened the frontline Member States. The EU started their search for ways to respond to the multiple challenges the refugee crisis entailed.

The EU quickly allocated funds outside Europe to address the root cause for irregular migration and to assist countries in handling the refugees (Council of the European Union, 2015b). The budget for Frontex operations Triton and Poseidon were tripled in May 2015 to help save lives at sea, and secure Europe's external borders. Thousands of lives were saved at sea by these operations. However, as long as the migration routes were functioning, there would still be deaths at sea. Only by stopping the refugee flow across the Mediterranean Sea could the death tolls be lowered to the minimum.

Regarding the overcrowded frontline Member States, a number of rectifying measures were attempted to make up for the uneven distribution. The relocation scheme was perhaps the most promising measure, launched in May 2015 under the European Agenda on Migration, however with little success. Greece and Italy were still under immense pressure, even though they also received assistance through the hotspot approach.

The EU was eventually under a lot of pressure to find a functional response to the refugee crisis. Media coverage of the refugee crisis put pressure on the EU to act. Media and press coverage is important in this context given that they have an important role in framing

and setting the agenda for issues in the public debate (Berry, Garcia-Blanco, & Moore, 2016, pp. 3-5). A comprehensive study by Cardiff School of Journalism, Media and Cultural Studies for the UNHCR found that the European attitude towards asylum and immigration has hardened over the last years (Berry et al., 2016). This partly due to the rise in immigration to Europe, as well as the financial crisis which led to a public anxiety about immigration across Europe. This, in turn, encouraged the growth of far-right anti-immigration sentiments. The study found that the European attitudes towards refugees and immigrants were highly polarised, being most positive in Sweden and most negative in the UK. However, there was concurrence that the EU should find a resolution to the refugee crisis, regardless whether they wanted the EU to stop immigrants from entering Europe, or to welcome them. When the EU did not quickly find a solution, they were perceived by many as slow, bureaucratic and divided. In Sweden, the press went so far as to directly blame the EU for the deaths in the Mediterranean Sea (Berry et al., 2016, p. 10).

With the surge of right-wing parties in Europe with anti-immigrant, as well as anti-EU sentiments, the pressure was higher than ever for the EU to find a functional response to the massive influx of asylum seekers. Part of the reason why the EU's initiatives were unsuccessful was certain Member States' reluctance to partake. One example is Poland, Hungary and the Czech Republic's reluctance to relocate refugees. Countries like Germany and Sweden were among the few countries leading liberal policies towards the refugees. There was a polarisation of opinions on how the refugee crisis should be managed.

Eventually also Sweden resorted to more restrictive measures and lowered their standards for asylum and migration to EU minimum standards. Merkel seemed to stand alone in her conviction that "we can do this". As well as receiving little support from other European countries, she also received criticism from German political parties and the German public. She could not resolve the refugee crisis alone, and advocated heavily for a more even distribution through a relocation mechanism, which turned out relatively unsuccessful. In the end, Merkel was the one advocating most heavily for the EU-Turkey Agreement, arguably because of the high pressure on Germany at the lack of an even distribution of asylum seekers.

### **The EU's motivation – Why Turkey?**

Despite the EU's efforts, demand for more extensive measures remained. The EU saw cooperation with third countries as a necessary action. Turkey had for years been a popular

transit country for migrants and asylum seekers wanting to reach Europe (Içduygu, 2000). In 2015, Turkey was hosting over 2.5 million refugees. The same year, 800,000 refugees and migrants crossed the Aegean Sea from Turkey to Greece, accounting for 80 percent of the number of refugees entering Europe by sea in 2015 (UNHCR, 2015). Hence, limiting access for asylum seekers from Turkey would greatly decrease the number of asylum seekers coming to Europe.

The EU's actions towards Turkey underline their importance to the EU during the refugee crisis. As presented in the previous section, the EU initiated several meetings with Turkey in 2015, establishing the EU's interest to cooperate. Turkey was early on mentioned as an essential partner to the EU regarding the situation in Syria (Council of the European Union, 2015d). In the European Agenda on Migration, Turkey was the only country highlighted as a key transit country the EU wanted to establish a partnership of bilateral cooperation. It was described as "A good example of where there is much to be gained from stepping up cooperation" (European Commission, 2015b, p. 8).

Already in September 2015, at the informal meeting of EU heads of state or government on migration, it was stated that a reinforced dialogue with Turkey was important "[...] in order to strengthen our cooperation on stemming and managing the migratory flows" (Council of the European Union, 2015b). The EU-Turkey Joint Action Plan was outlined 15 October 2015, setting out priorities for the EU-Turkey cooperation on migration. The main objectives were to support Syrians under temporary protection and manage irregular migration. It was further pointed out that "[r]esults must be achieved in particular in stemming the influx of irregular migrants. The EU and Turkey agreed to implement the Joint Action Plan which will bring order into migratory flows and help to stem irregular migration." (European Commission, 2015e). The focus on the high migration influx to the EU was clearly emphasised. Hence, at this point one can consider this to be a main motivation for the EU behind their cooperation. In the Joint Action Plan it was also agreed that "The EU and Turkey will address this crisis together in a spirit of burden sharing." (European Commission, 2015a, p. 1). However, the result of the EU-Turkey Statement can hardly be said to promote the sharing of burdens. On the contrary, it rather promotes a shift of burdens from Europe to Turkey.

Another indicator of the importance of EU-Turkey cooperation on migration was the EU's delayed report on Turkey's progress late in 2015 (European Commission, 2015d). Fearing that EU criticism of Turkey would complicate the negotiations on how Turkey was assisting Europe in stemming the refugee flow, it is thought that the Report was delayed until after the

Turkish election which took place 1 November 2015 (Euractiv, 2015; Zalan, 2015). The four previous reports were published in mid-October, whereas the 2015 report was published 10 November. The 2015 report harshly criticised lack of rule of law and fundamental human rights in Turkey, criticism directed at Erdoğan who won the presidential election.

At the November EU-Turkey Summit, the re-starting of accession was agreed, although the overall negative position of EU Member States on Turkish accession was not different from the situation in 2005 (Phinnemore & İçener, 2016, p. 455). Phinnemore and İçener (2016) argue that this seemed contradictory to EU norms and values, given the increase in standards for membership in the EU, and the recent concerns for rule of law and fundamental rights outlined in the Turkey Progress Report. Phinnemore and İçener argue that the EU granted progress in negotiations in exchange for assistance with refugees and migrants. They categorise this move as a “realpolitik-driven side-lining of EU norms and values” (p. 451). If that is true, this would be an indication that the EU would go to great lengths to be able to benefit from cooperation with Turkey on the issue of migration and asylum.

Despite the enhanced cooperation between the EU and Turkey through the Joint Action Plan, the results were not sufficient. As Council President Tusk remarked after the meeting of the EU heads of state or government with Turkey on 7 March 2016: “We agreed that despite good implementation of the Joint Action Plan on migration, the flow of migrants passing from Turkey to Greece remains much too high and needs to be brought down significantly.” (Council of the European Union, 2016b, p. 1). Speaking of the upcoming EU-Turkey Agreement, Tusk stated “ [...] the days of irregular migration to the European Union are over” (Council of the European Union, 2016b). This proves the EU’s satisfaction with the Agreement. As previously stated, the Agreement has been labelled a success by the Commission (European Commission, 2017a).

The EU’s previous stance on EU-Turkey relations indicates that the option of such an elaborate cooperation agreement with Turkey was a measure of last resort. The sudden offer to re-open accession negotiations is surprising, given the negative 2015 Progress Report on Turkey. The negative attitudes of Member States towards Turkish accession is a further indication of the EU-Turkey Agreement being a last resort option. Even Germany, who had advocated strongly for internal relocation and opposed Turkish accession, was a strong supporter of the EU-Turkey Agreement. This indicates that even those of liberal refugee policies who advocated for internal resolutions saw that externalisation of policies might be the only solution.

Regarding the EU-Turkey Agreement, President of the European Commission Jean-Claude Juncker even stated that:

“In international relations, we are sometimes obliged to reach agreements with countries, those forming governments, leaders, not because we particularly like them but because we have a duty to help those who would suffer if we did not reach an agreement” (European Commission, 2016b).

The rhetoric Juncker uses in the statement above, as well as the rhetoric in the EU-Turkey Agreement, indicates the EU’s main motivation being humanitarian. However, in the analysis, the main motivation of the EU has shown rather to be that of self interest in security. The failure of the Agreement to properly address humanitarian issues further emphasises the motivation of self-interests above humanitarian ones. The main example of this is the branding of Turkey as a safe country, when this is contested by multiple human rights NGOs as well as the Council of Europe Parliamentary Assembly.

Furthermore, one could argue that the EU-Turkey Agreement was simply a case of the EU paying Turkey to keep refugees out, and that the prospect of Turkish accession was never realistically on the table. Turkey has in recent years had a growing regional role and an enhanced political focus towards the Middle East and Russia. This leads to the notion that Turkey is turning away from the West, favouring an eastward orientation (Barysch, 2010).

Despite President Erdoğan maintaining a seemingly positive stance towards EU accession, the developments the country has undergone during his reign seems to indicate that Turkey is moving further away from EU norms and values, and consequently accession. Turkey has experienced decreasing liberalism and worrying developments of deteriorating rule of law and democracy in favour of an authoritarian regime since the beginning of Erdoğan’s rule under AKP (Justice and Development Party). This, along with reported breaches of fundamental rights, is alienating Turkey from Western values and decreasing the chances of ever becoming a member state of the EU (Cagaptay, 2009). Moreover, the Islamist sentiments in Erdoğan’s politics is incompatible with what the EU stands for (Kaya, 2015). Criticism of Erdoğan’s rule by the EU and other actors have been rejected by President Erdoğan himself.

Furthermore, after the realisation of the EU-Turkey Agreement, Erdoğan has uttered several times that if the EU does not comply with Turkey’s wishes, Turkey can ‘open the gates’ for refugees to Europe (Euractiv, 2017a, 2017b; Nielsen, 2016a). These kinds of threats indicate that Erdoğan has limited enthusiasm for cooperation with the EU. He stated that Turkey will

not cooperate with the EU at all costs. Furthermore, Erdoğan threatened to favour cooperation within the Shanghai Security Organisation (SCO)<sup>12</sup> above EU cooperation (Euractiv, 2016). With an increasing anti-EU rhetoric and growing nationalist sentiments, Turkey is far from gaining accession to the EU, strengthening the argument that Turkish accession is not realistic in the near future (Hackwill, 2017; Park, 2015, p. 591).

The growing gap created by the developments in Turkey in comparison to fundamental European values has led Turkey further and further away from EU membership. Turkey's ambivalent attitude towards EU accession, in combination with the hesitant stance towards Turkish accession by EU Member States and institutions stands as an indication that membership might have never have been realistically on the table during the negotiations. Instead, it may have acted merely as a cosmetic addition to the negotiations. As was reiterated at the Varna Summit in March 2018, Turkey and the EU are committed to continue cooperation on migration, despite the unlikely prospect of Turkish accession, further emphasising that accession was not a pivotal part of the deal.

To sum up, EU cooperation with Turkey has been tumultuous, characterised by political differences and discrepancies between the EU's core values built on rule of law, democracy and human rights and the situation in Turkey. This largely remains today, the gap growing even bigger after the attempted coup in 2016. The probability of accession has in turn been low ever since the accession talks began in 1995, albeit both parties' the efforts. However, this thesis argues that Turkey was such an important strategic partner during the refugee crisis that the EU was willing to cooperate regardless of this. This is proved through the extensive efforts the EU lay down in several Summits, and their willingness to re-invigorate accession talks, despite the discrepancies mentioned.

As for the EU-Turkey Agreement, the objectives of the Agreement set forth by the EU are considered largely successful, in that the flow of refugees decreased drastically, thereupon also the deaths at sea and human smuggling. However, many of the points of the Agreement has seen little or no progress. The fact that the Agreement has prevented deaths at sea is welcome. However, the possible dire humanitarian repercussions of sending refugees back and/or keeping them in Turkey, a country with a questionable state of rule of law, democracy

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<sup>12</sup> The Shanghai Security Organisation is a security bloc with countries like Russia, China and Central Asian countries.

and human rights standards puts a damper on the humanitarian aspect of the Agreement. To consider the EU-Turkey Agreement a success would therefore be a bold statement.

The decision to issue the EU-Turkey Statement was a measure of last resort, as the EU and its Member States were not able to internally resolve many of the challenges the refugee crisis entailed. The multiple measures taken by the EU, such as relocation and resettlement schemes, the hotspot procedures and Frontex operations at sea did not resolve the situation. The focus by many Member States on the security issue migration poses, increasing polarisation of opinions within the Union and the inability to act in unison placed considerable pressure on the EU to act.

These arguments indicate that the EU's main motivation was to stop the migration flow to Europe based on self-interests mainly of internal security, not humanitarian considerations. This argument is strengthened by looking at past tendencies of a security-focused asylum and migration policy, and the preference of externalisation instead of internal distribution measures. The focus on border security and externalisation in place of internal relocation during the refugee crisis further points to the EU-Turkey Agreement being a security oriented measure.





## **Chapter 5: EU policy development on asylum and migration**

For this chapter, the thesis presents a discussion of the findings, and relate them to a larger context of motivations for EU policy-making in the area of asylum and migration. It will relate the findings to relevant theories and frameworks that help explain the EU's response to the refugee crisis, and why the EU-Turkey Agreement was concluded.

The first theory this chapter draws upon is the theory of securitisation, notably set out by Ole Wæver (Buzan, Wæver, & De Wilde, 1998). The theory states that by labelling something a security threat, it becomes one. By doing so, the actor claims a right to resort to extraordinary measures in order to prevent the realisation of that security threat. Taureck (2006) explains that by securitising an issue, “[t]he issue is then moved out of the sphere of normal politics into the realm of emergency politics, where it can be dealt with swiftly and without the normal (democratic) rules and regulations of policy-making” (p. 54).

The second theory this chapter presents is the *new intergovernmentalism* theory. Bickerton et al. (2015) argue that since the Maastricht Treaty, the importance of the supranational EU institutions in determining the character and direction of EU integration has been in question. Rather, integration has been driven by the search for policy co-ordination by the Member States through the Council. This post-Maastricht phase is labelled by these authors as new intergovernmentalism.

### **Uneven distribution as a lasting problem**

The EU has not been able to fully address many of the challenges that a common European asylum and migration policy poses. Despite the advances in European cooperation on asylum and migration since the Schengen Agreement, the refugee crisis emphasised major deficiencies in the asylum and migration system. The inability of even distribution of asylum seekers was most prominent. The Dublin Regulation had since its outset been severely criticised, but no improvements were made to alter its distribution deficiencies, despite the Commission and the EP's calls for a permanent relocation mechanism (Trauner, 2016).

When the refugee crisis struck, this became a prominent problem. The incomplete asylum and migration policy led to emergency measures having to be taken by the EU during the refugee crisis. The Council emphasised the need for internal solidarity, based on a voluntary relocation system (Council of the European Union, 2015d). However, the Commission called

for a relocation mechanism that fairly involved all Member States (European Commission, 2015b). Although several Member States were opposed to the relocation scheme, the Commission's proposal was approved through qualified majority voting in the Council – this despite the informal norm of wide-spread use of consensus in the Council (Trauner, 2016, p. 320). The use of majority voting shows the polarisation of the Member States (Trauner, 2016, p. 322). However, the Member States opposing the mechanism refused to relocate refugees. So the search continued for a solution to the overcrowded frontline Member States.

### **Externalisation as a solution?**

Although some Member States have been sceptical of distribution mechanisms, they have been far more lenient towards externalisation practices. This is shown in the constant emphasis in the Council Programmes to increase the focus on the external approach to migration since the Tampere Summit. This thesis' analysis of the EU's response to the refugee crisis shows that this was also the case during the refugee crisis. The relocation scheme as proposed by the Commission barely achieved any results. Again, the Member States were more prone to enhanced border security and externalisation of the problem, culminating in the EU-Turkey Agreement.

The introduction of an external approach to migration could be seen early in the policy development. The focus on externalisation has continued throughout EU policy-making on the area. This externalisation development has seen significant progress since 1999, with different frameworks for cooperation with third countries being established. Both the Council, who initiated externalisation during the Tampere Council in 1999, and the Commission, who were given mandate by the Council to negotiate with third countries, showed interest in cooperating with third countries on issues of migration and asylum. Given the common interest of externalising policy on this area, progress came faster in this area than on internal distribution schemes.

A problematic aspect of externalisation of asylum and migration policy is the creation of a 'Fortress Europe' (Manners, 2002). First of all, the EU-Turkey Agreement's main feature is that it prevents migrants from reaching Europe. The EU-Turkey Agreement effectively returns all illegal immigrants to Turkey, and through the one in-one out scheme – that only applies to Syrians – the EU are selectively choosing who can enter the EU and who cannot. Another concerning aspect of externalising asylum and migration policy is the idea of creating

a ‘protection lite’ approach to refugee protection. Gammeltoft-Hansen pointed out the externalisation of asylum and migration policy as giving rise to a ‘protection lite’ on the grounds that refugee protection is being outsourced to countries of lower protection standards than the EU. This is recognised in the EU-Turkey Agreement, as critics are sceptical to the categorisation of Turkey as a safe third country and that the non-refoulement principle is being breached.

### **Securitisation or Normative Power Europe?**

The EU is often conceptualised as a normative power. That is, an entity that is value-based, attempting to diffuse their norms and values through its actions on the international arena. The EU’s values and norms are based on principles of democracy, rule of law, social justice and respect for human rights (Manners, 2002). In 2012, the EU was awarded the Nobel Peace Prize on the grounds of having “ [...] for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe” (The Norwegian Nobel Committee, 2012). This illustrates the common view that the EU acts on the basis of human rights.

However, its response during the refugee crisis does not fully support this notion. This thesis has shown that in many ways, the EU’s response to the refugee crisis, in particular their controversial agreement with Turkey, was based on interests of security. Consequently, the EU are contradicting the theory of Normative Power Europe. To be a normative power, the EU would have to exercise that normative power consistently (Manners, 2002). With the EU-Turkey Agreement, their norms and values of human rights are to a certain extent set aside for the benefit of securing Europe’s external borders and the internal security.

This argument would fit the theory of securitisation. According to this theory, the risk of a security breach can allow extraordinary measures to be taken (Waeber, 2014). By placing asylum and migration policy in the category of security policy (by among other things integrating it into the Area of Freedom, Security and Justice), migration to Europe is branded a potential security threat. To preserve internal and border security, extraordinary measures can therefore be taken. As shown in the previous chapter, the EU-Turkey Agreement can be argued to be a measure of last resort. Hence, it can be seen as an extraordinary measure and can thus be explained through the theory of securitisation. The findings of this thesis also indicate that motives of internal and external border security behind the EU-Turkey Agreement were strong. As argued in the previous chapter, human rights motives were present, but the continuation of

the Agreement despite the loud criticism of its consequences indicates that the motivation did not come mainly from a human rights standpoint.

Scholars argue that securitisation of migration can be executed at the cost of human rights (Huysmans, 2000; Triandafyllidou & Dimitriadi, 2014). The EU-Turkey Agreement has received harsh criticism on the grounds of alleged human rights violations. Although human rights motives were also present, the thesis' analysis proves that the EU's main motives for the Agreement stems from its inability to handle the refugee crisis internally. This culminated in a need to externalise their policy. A clear rhetoric of humanitarian goals and human rights values remain in the EU-Turkey Agreement. However, as Pace states: "If constructions of NPEU [Normative Power European Union] are to have any ethical and moral justifications then rhetoric has to add up to action" (2007, p. 1061).

Following the EU-Turkey Agreement, more extreme measures are now being taken. It has been suggested to duplicate the EU-Turkey Agreement in Libya. However, this proposal was criticised by several MEPs and rejected by the Commission on the grounds that the situation was not similar in Libya (European Parliament, 2016; Nielsen, 2017). However, Italy are taking similar action as they have outsourced border control to the Libyan Coast Guard in their Memorandum of Understanding in 2017 (The Italian Republic and the Libyan State, 2017). This cooperation agreement has received massive criticism, as conditions for refugees in Libya have been reported to be extremely bad (Guerin, 2017). This is a noteworthy development. It can be argued that the EU, through their increasingly controversial asylum and migration policy, are setting standards for what is acceptable in terms of security measures that affects protection of refugees and the upholding of international law and human rights.

### **New intergovernmentalism: Member States as prominent actors**

The question then remains: how can one explain this focus on internal and border security within EU's asylum and migration policy? Trauner and Ripoll Servent argue that the emphasis on security can be explained by the Council's strong role in ASFJ policy (Trauner & Ripoll Servent, 2016). Even though the development of a common EU policy on asylum and migration has increasingly seen more power go to supranational EU institutions (i.e. the Commission, the EP and the CJEU), the Council has maintained their power and ability to implement their preferred policy.

While the EU have introduced common standards for asylum and migration in Europe, the different views of the Member States on these issues have resulted in a constricted development of the area. Despite these differing opinions, security concerning migration has been an issue of common concern where interests of Member States have largely coincided. Since the 1990s, migration was increasingly viewed as a security threat to the receiving countries, accused of being linked to crime, terrorism or Islamic fundamentalism (Boswell, 2003b, p. 623). There has therefore been an increased emphasis placed on internal and border security policy in connection to EU migration and asylum policy. Given the Member States' common position on the issue of internal and border security in connection to migration, a common stance in the Council, and hence decision making, has been quicker to achieve than in other areas of migration and asylum policy.

In a larger context, these findings seem to support the theory of *new intergovernmentalism*. The European Council and the Council of the EU are the intergovernmental EU institutions and will traditionally view national security as a top priority in policy making. The Commission and the EP, as the supranational institutions, will hold the common European values and norms higher. Securitisation on the expense of human rights would be a breach on these norms and values (Dogachan, 2017, p. 4). This is coherent with the thesis' findings that the Member States, through the Council, have acted as an advocate for security interests, and have managed to take charge of policy changes within asylum and migration. Through boycotting or only partially implementing EU measures, such as with the relocation scheme, Member States have shown resistance towards EU decisions that have taken a more liberal stance towards asylum and migration matters at the expense of national interests. The case with the relocation scheme led to the EU being forced to take other actions to solve the issue of the refugee flow, indicating that the Member States stand with significant power on these issues.

As mentioned in the beginning of this thesis, Kaunert and Leonard (2012) argued that the communitarisation<sup>13</sup> of EU asylum and migration policy has led to a more liberal and less restrictive policy. This would seem to go against the theory of the Council being prone to more restrictive policies, and being the institution with most influence in migration and asylum policy. However, Trauner and Ripoll Servent argue that a less restrictive policy does not

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<sup>13</sup> Communitarisation is when there is a presence of a supranational aquis, e.g. the Commission and the EP are included in the aquis.

exclude the Council's strong role. They argue that the general development of EU asylum and migration policy indeed has become more liberal. However, they emphasise that the EP and the Commission have altered their liberal positions to a greater extent towards the Council's position, while the more 'restrictive' Council has largely maintained their position.

Trauner and Ripoll Servent (2016) argue that even though the EU's supranational institutions (e.g. the EP and the Commission) have gained competences, they have not altered the 'policy core' of ASFJ. This is on the grounds that the Council set the grounds for this 'policy core' before the institutional changes that led to this supranationalisation. The Council often had a security approach to migration and asylum policy, which prevailed over the more liberal stance of the EP and the Commission (p. 1417). These arguments support the new intergovernmentalism theory, that Member States still have the most influence on asylum and migration policy.

The Council has indeed sought higher standards for asylum procedures and facilities. The Reception Conditions Directive and the Qualification Directive, both aimed at raising common standards, were concluded by the Council while they still held sole decision making power in the transition period between 1999 and 2004. However, the Member States have maintained competence on several issues within asylum and migration. The number of refugees Member States are to take in has remained a competence of the respective state. Border control has also remained in the Member State's power, as they are able to re-introduce border controls.

Furthermore, one sees that there has been a notable difference in policy developments on asylum and migration. Not all aspects of the policy area have seen much development. Developments on the area of asylum seeker distribution, which has been the main deficiency of EU migration and asylum policy, has been slow and without significant results. The EU has failed to make decisions regarding relocation and even distribution among Member States. The Commission and the Parliament have advocated strongly for permanent relocation procedures, but these decisions have been stuck in the Council. Developments on the external dimension of asylum and migration policy and on external border security on the other hand, has seen rapid development.

This could be explained through examining national interests. EU Member States all have vested interests in the EU ensuring that the common external borders of the Union are secure, as well as ensuring internal security. EU Member States will only allow for common actions where it is least likely to go against national interests (Lavenex, 2001). Consequently, measures of distribution through relocation has been contested in the Council, while

externalisation to third countries has been encouraged. The common interest of internal security was at the core of the externalisation of migration and asylum policy (Koutrakos, 2010, p. 140). By framing migration as a security issue, externalising these policies are justified (E. Thielemann, 2018). However, deterrence measures are not solely sufficient to handle migration and asylum in Europe, especially not the human rights aspect of refugee protection. In fact, it is known to do the exact opposite (Triandafyllidou & Dimitriadi, 2014). Therefore, a conflict of interest occurs of the EU's interests of security, and their normative values.

The refugee crisis constituted a highly intergovernmental problem, and quickly posed as an issue of national security. A solution on the intergovernmental level was therefore more likely than a community response at the supranational level. Given the national interest of security and the Council's prominent role, it can be argued that the EU was guided towards a securitisation oriented response to the refugee crisis through increased border security and externalisation of policy in favour of internal relocation measures.





## Chapter 6: Conclusion

This thesis aimed at answering why the EU resorted to the EU-Turkey bilateral agreement in response to the refugee crisis, despite the conflicted nature of the Agreement. It did so by researching the development of EU asylum and migration policy over time, and by analysing the reactions from EU institutions and Member States to the refugee crisis. This research brought out the EU's motivation to conclude the Agreement. In doing so, this thesis addresses the recent developments in EU policy-making in the area of asylum and migration, giving grounds for further research on the topic.

It becomes evident that the EU had several motives for their bilateral cooperation with Turkey. Through researching the development of EU asylum and migration policy, the thesis found that the EU initially did not conduct a particularly restrictive policy. However, the Member States hold a strong position in the asylum and migration policy area, resulting in a policy with a distinct security focus. The foundation the Council lay down during their period as the sole decision maker affected the policy area, making these security interests prominent. These national interests led to difficulties establishing mechanisms to remedy the uneven distribution of asylum seekers, primarily caused by the Dublin Regulation. Due to the political difficulties harmonising internal asylum and migration policy, the EU increasingly resorted to the managing of the external dimension of asylum and migration policy.

During the refugee crisis, Member States still had not solved the problem of uneven distributions of asylum seekers. Even though the Commission's relocation proposal went through on account of QMV in the Council, the scheme was largely unsuccessful as Member States were unwilling to commit fully, or not at all. The crisis created a divide in the European population on how to handle the refugee crisis. The German Chancellor Merkel called for European solidarity, but met harsh opposition to her liberal policy. Many considered the refugee flow a security threat, consequently introducing restrictive measures. The rise of right-wing and nationalist populist parties increased anti-immigrant sentiments and intensified the polarisation of opinions.

The increasing polarisation of opinions induced the EU to act. The EU's efforts were affected by the lack of common and swift decision making. A focus on security issues through the Council's leadership tainted the development of the policy, and remained through the refugee crisis, limiting the ways in which the EU was likely to act. The favoured efforts were security measures at the external borders and third country cooperation. This substantiates the

theory of new intergovernmentalism in EU asylum and migration policy, confirming the power the Member States hold.

The analysis of the EU's motivation shows that the Agreement with Turkey was based in large part on internal interests of security, as human rights concerns were only moderately taken into account both in the actual Agreement, and in the implementation of the Agreement. Despite years of stalemate in membership negotiations on the grounds of the political situation in Turkey, as well as concerns for the fundamental and human rights situation, the EU turned to Turkey for cooperation on migration. Turkish EU accession was not a major motivation for either party to the Agreement. Both EU Member States and institutions and Turkish President Erdoğan have recently shown growing reluctance to contemplate actual EU accession by Turkey, albeit for different reasons. The continued cooperation on migration agreed at the Varna Summit in March 2018 at a time when membership prospects are lower than ever, is further proof of the irrelevance of membership as a motive to the Agreement.

With the lack of motivation on a humanitarian basis, and because of the state of Turkish accession, the thesis argues that the Agreement mainly boils down to – colloquially speaking – the EU paying Turkey to keep refugees out. This argument is backed up by EU's historically security oriented asylum and migration policy, preferring externalisation and security measures over internal measures. The Member States' prominent role in asylum and migration policy continued during the refugee crisis, and can be argued to have pushed the EU towards making a security oriented response.

As chapter five has shown, the theory of securitisation helps to explain how the refugee crisis was viewed as a security threat, giving grounds to act through emergency measures, regardless of the questionable human rights nature of the measures or of Turkey as a partner in the Agreement. New intergovernmentalism in turn can help explain how and why the Member States through the Council were able to maintain a focus on security throughout asylum and migration policy making.

This thesis concludes that the EU-Turkey Agreement can be attributed to the failure of the EU as a whole to respond adequately to the refugee crisis. The findings indicate that instead of acting as a normative power, the EU acted on motives of security interests, and could do so because of the prominent role of the Member States. The refugee crisis posed a challenging situation to solve, and there is perhaps no perfect solution. Consideration must be given to the conflicting aims of the respect of human rights, the security of the EU and the managing of asylum and migration in Europe. This thesis has pointed out some of the difficulties in

balancing these three factors in the EU's policy making. In this case study, security considerations appear to have prevailed. If that is the case, this is a problematic development for the EU, as human rights are one of the fundamental values the EU is built on, and it has created a strong narrative about itself as an international defender of such values. By externalising refugee protection to third countries with significantly lower standards than the EU holds, this facilitates Gammeltoft-Hansen's notion of refugees being victims of 'protection lite'. The fact that the EU are accommodating this, sets precedence for future action, and endangers the values of refugee protection.

However, generalisations about the EU's asylum and migration policy let alone its future development are not possible based on the case of the EU-Turkey Agreement alone, which was arguably negotiated and implemented in an exceptional crisis situation. This thesis has focused on the EU's motivation for the EU-Turkey Agreement. Further research could benefit from exploring Turkey's motives, as these do not seem to be evident. To gain deeper insights into contemporary developments in EU asylum and migration policy, future research could benefit from further exploring the Member States' influence in this policy area. With the exit of the UK from the EU, this sets the precedence for future disputes between Member States and the EU. There is, for example, an obvious discrepancy between the often restrictive policy preferences of many Member States, and the more liberal policy of the supranational institutions of the EU, which perhaps care more about the EU's internal and external identity and image.



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